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OUR CONTRACTS

POPULAR HANDBOOK
ON THE LAW OF CONTRACTS
FOR WORKS & SERVICE

GIBBONS & UTTELEY



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LABOUR CONTRACTS

“Two are better than one ; because they have a good reward for their labour.”
ECCLESIASTES iv. 9.

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LABOUR CONTRACTS

A POPULAR HANDBOOK
ON THE LAW OF CONTRACTS FOR
WORKS AND SERVICES

BY
DAVID GIBBONS

Fourth Edition, revised and enlarged

WITH APPENDIX, GIVING FULL TEXT OF MANY STATUTES

By T. F. UTTLEY, SOLICITOR

AUTHOR OF "HINTS ON STEPHEN'S COMMENTARIES," "HINTS ON CRIMINAL LAW"
ETC. ETC.



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PREFACE.

It is hoped that this portable volume on the "Labour Laws," in the present revised and enlarged edition, will be found increasingly useful by Employers and Workmen generally, as well as by members and officers of Trade Unions, and all persons who are interested in efforts for the improvement of the position of the labouring classes, many of whom have little time to study larger works upon the subject.

The usefulness of the work for purposes of reference has been materially enhanced by the Lists of Cases and of Statutes Cited which have been added to this edition ; and these lists are supplemented by a further List of Cases for Reference, which should be consulted by the student of this branch of the law. An Appendix of Statutes has also been added.

The number of Forms of Contracts between employers and workmen has been increased in the pre-

sent edition, and they now include, besides a set of Working Rules to be embodied in an agreement between master and workman, a form of Engagement of Canvasser and Collector of a Trade Union, a form for Engagement of Shop Assistants, etc.

Amongst the new matters introduced in the body of the work, references have been made to such statutes as the Stamp Act, amended so recently as 1891; the Bankruptcy Act, 1883, with the amending acts; and other statutes affecting contracts for works and services which have been placed on the statute-book within the last few years, in which are included two Acts of the year 1892—namely, the Shop Hours Act, 1892, and the Betting and Loans (Infants) Act, 1892.

The reader who desires to further pursue the subject of Labour Contracts may be referred to (amongst others) the following text books and authorities thereon:—Hudson's "Building and Engineering Contracts;" Evans's "Law relating to the Remuneration of Commission Agents;" Redgrave's "Factory Acts;" Smith's "Law of Master and Servant;" Ruegg's "Employers' Liability Act," as well as the treatise of Messrs. Roberts and Wallace on the same topic, and the very recent work thereon by Mr. Minton-Senhouse.

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INTRODUCTION.

MANY very important Acts of Parliament relating to the subjects treated of in this work have been passed since the last edition was issued. The Factories Acts have been much extended; measures treating more definitely of the ages at which children may be employed have been passed; trades unions have been more thoroughly recognised; and the law generally has been made far more favourable for the workman. The full text of some of the Acts of Parliament referred to will be found in the Appendix (pp. 255—362).

Perhaps the most notable of these statutes are the Employers and Workmen Act, 1875 (38 & 39 Vic. c. 90), and the Employers' Liability Act, 1880 (43 & 44 Vic. c. 42). The Shop Hours Regulation Act, 1886 (49 & 50 Vic. c. 55), which was passed as a temporary measure, has now been superseded by the Shop Hours Act, 1892 (55 & 56 Vict. c. 62), which will be found amongst the statutes in the Appendix, and is likely to form the nucleus of future and more important legislation which will more widely extend the present provisions of the law.

The Trade Union Act of 1876 (39 & 40 Vic. c. 22) has enlarged the scope of the previous Act of 1871, and

the Truck Act, 1887 (50 & 51 Vic. c. 46), has done the same service for the statute of 1831.

The Factory and Workshop Act of 1891 (54 & 55 Vic. c. 75) is one of the most important of the statutes given in the Appendix. It materially extends the Act of 1878, which so well codified the previous law on the subject. The Merchant Shipping Act of 1889 (52 & 53 Vic. c. 46) is one of interest to mariners.

The Arbitration Act, 1891 (54 & 55 Vic. c. 75), is another statute to be observed; and so also is the Partnership Law Amendment Act, 1890 (53 & 54 Vic. c. 30).

According to the Stamp Act of 1891, agreements between employers and workmen do not require stamps. This exemption applies to any agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant, and to any agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coast-wise from port to port in the United Kingdom.

With regard to contracts with local authorities for work and labour, it should be borne in mind (as pointed out in Hudson's "Law of Building and Engineering Contracts") that all such contracts must be under seal in the following cases:—Contracts with municipal corporations for local improvements in cases which do not fall within the Public Health Act, 1875.*

By the Public Health Act, 1875 (38 & 39 Vic. c. 55), s. 7, all urban authorities (for definition of which,

* See Rawlinson on "Municipal Corporations" (eighth ed.), p. 226, note (a).

see s. 6) not then incorporated were thereby incorporated, and those already corporations remained such (Young v. Leamington (1883), 8 App. Cas., 517, *per* Lord Blackburn): The urban authorities consist of town councils in municipal boroughs, local boards in urban districts, and towns improvement commissioners which have not received municipal charters.

By s. 174 (1) of the same Act, every contract made by an urban authority, whereof the value or amount exceeds £50, shall be in writing and sealed with the common seal of such authority. The provisions of section 174 apply only to contracts which do not exceed the sum of £50 at the time they are made. Further, s. 174 (2) provides that—Every such contract shall specify the work, materials, matters, and things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify the pecuniary penalty to be paid in case the terms of the contract are not duly performed. Sub. s. (3) provides that the urban authority shall obtain from their surveyor a previous estimate in writing of the cost and most advantageous mode of contracting.

By s. 174 (4), before any contract of the value or amount of £100 or upwards is entered into by an urban authority, at least ten days' public notice must be given, stating the nature and purpose of the proposed contract and inviting tenders for the execution of the works, and the urban authority must also take sufficient security for the due performance of the contract.

The Metropolis (states Mr. Hudson) is not included in the Public Health Act, 1875 (38 & 39 Vic. c. 55),

see section 2 ; and as to the Corporation of the City of London there would appear to be no statutory provision as to their contracts, which would, therefore, be governed by the common law as to corporations. Outside the "City," the Metropolis Local Management Act, 1855 (18 & 19 Vic. c. 120), s. 149, provides that all contracts of the Metropolitan Board of Works, and every district board and vestry, for works and materials "whereof the value or amount exceeds £10, shall be in writing or print, or partly in writing and partly in print, sealed with the seal of the board or vestry" (see 52 & 53 Vict. c. 63. s. 20).*

The London County Council is now, by the Local Government Act, 1888 (51 & 52 Vic. c. 41), s. 40 (8), invested with the powers of the Metropolitan Board, and created a corporation (s. 79). The district boards of works and the vestries in the metropolis are corporations by the Act of 1855 (18 & 19 Vic. c. 120), and are not affected by the Local Government Act, 1888, except in so far as they are (s. 41 (4) (b)) constituted district councils and "urban authorities." And by s. 64 of the Metropolis Management Act, 1855 (18 & 19 Vic. c. 120), no officer or servant is to be interested in any contract (see 52 & 53 Vic. c. 69).

Further, corporations which are not municipal and not trading comprise, *e.g.*, colleges, deans, and chapters ; also various bodies constituted corporations by statute, such as boards of guardians, which are incorporated by 5 & 6 Will. IV. c. 69, s. 7, and are also rural sanitary

* The Public Health (London) Act, 1891 (54 & 55 Vic. c. 76) has many important sanitary clauses.

authorities under the Public Health Act, 1889 ; county councils, which by the Local Government Act, 1888 (51 & 52 Vic. c. 41, ss. 3 & 79 (3)), are the successors of the justices, and (by s. 79 of that Act) are made corporations. The county councils, except the London council, are subject to no special statutory provisions as to contracts, except as to reformatory and industrial schools, as to which the plans and costs of the buildings must be submitted to the Home Secretary, and his consent obtained, and then the meeting of the council to consider the scheme must be advertised in accordance with 29 & 30 Vic. c. 117, and c. 118, and 35 & 36 Vict. c. 21. As to lunatic asylums, the county councils are invested with the power and duty to provide and erect them under the Lunacy Act, 1890 (53 & 54 Vic. c. 5), ss. 238 and 240.

The principal statutes relating to buildings under which a contract may be unlawful, are the Factory and Workshop Act, 1878, 41 Vic. c. 16; Metalliferous Mines Regulation Act, 1872, 35 & 36 Vic. c. 77; Coal Mines Regulation Act, 1887, 50 & 51 Vic. c. 58; Metropolitan Building Act, 18 & 19 Vic. c. 122; Metropolitan Management Act, 18 & 19 Vic. c. 120; Public Health Act, 1875, 38 & 39 Vic. c. 55; Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, 46 & 47 Vic. c. 36; Towns Improvement Clauses Act, 1854, 17 & 18 Vic. c. 103; Public Health (Water) Act, 1878, 41 & 42 Vic. c. 25; Disused Burial Grounds Act, 1884, 47 & 48 Vic. c. 72; Public Health Amendment Act, 1890, 53 & 54 Vic.

c. 59 ; Public Health Buildings and Streets Act, 1888, 51 & 52 Vic. c. 52.

The by-laws made in pursuance of these Acts, if duly made and reasonable, have the force of law, according to the views of Mr. Hudson in his volume on contracts (*supra*).

In the present state of agitation between employer and employed, it is no easy matter to find a means of mediation equally acceptable to both parties. Mention is made now and again of Boards of Conciliation and the like, and labour statutes often contain arbitration clauses.

By section 24 of the Arbitration Act, 1889 (52 & 53 Vic. c. 49), it is enacted that the Act is to apply to every arbitration under any Act passed before or after the commencement of the Act as if the arbitration were pursuant to a submission, except in so far as the Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act.

Amongst the statutes comprising provisions relating to arbitration are the following:—5 Geo. IV. c. 96 ; 7 Wm. IV. and 1 Vic. c. 67 ; 30 & 31 Vic. c. 105 ; 35 & 36 Vic. c. 46 ; 41 Vic. c. 16 ; and more particularly 54 & 55 Vic. c. 75.

LABOUR CONTRACTS:

A POPULAR HANDBOOK ON

THE LAW OF CONTRACTS.

1. ALMOST everything that we see around us, which has been formed by the art of man, has been formed *by means of contracts*. The bread we eat, the clothes we wear, the house that shelters us, the iron road on which we travel, the puffing engine which draws us rapidly along, have become what they are by contracts. The mutual consent of men to assist each other is a contract. By contracts they combine to labour, and by contracts are produced all the necessities and luxuries which distinguish civilised from savage life.

The idea of a contract naturally leads to the idea of law. Having ascertained what a contract is, we consider what is to be done with the man who does not faithfully perform it. Law brings the whole force of society to bear on him who fails in his engagement, to compel him to perform it, or to punish him for its breach. Law determines what contracts shall be enforced, how they shall be performed, and the consequences of their breach.

The branch of the law of contracts to which the present volume is devoted is that relating to hire of labour, and principally so far as it concerns the erection of

buildings and performance of other like works. Next to the marriage contract, this is perhaps of the earliest origin, since it has for its object the creation of property : all other contracts relating to property concern its transfer or preservation, and may therefore be said to be derived from and grow out of this. Contracts for the hire of labour are of two sorts :—the contract to perform works, whereby one man agrees to do a certain work for another, as to build a house, and by which the contractor is bound to find all the labour and materials, and do everything that may be necessary for the building of the house ; and the contract to serve, whereby one man lets his personal services to another, either for a particular purpose or generally, and by which the servant is bound merely to do as much as he himself can towards the performance of the work for which he is engaged. By the first, the relation of contractor and employer is created ; by the second, the relation of master and servant. The plan proposed is first to consider these two contracts together with reference to their legal validity, and then to treat of the duties and rights of each party to each contract separately.

With reference to their legal validity contracts for the hire of labour, as well as all other contracts, are divisible into contracts which the law prohibits, and which it considers ought not to be performed, and which may be termed bad or illegal contracts ; contracts which it will not enforce, and which therefore need not be performed, although it is not contrary to law to perform them, and which may be termed imperfect contracts ; and contracts which it will enforce, and which therefore must be performed, and which are perfect contracts.

2. Contracts which the law prohibits, or illegal contracts, are those by which something is agreed to be done contrary to the general interests of society. They

are illegal by common law, or by statute. Contracts illegal at common law are those that so plainly violate some great principle of morality or policy, that the Courts have of their own authority held them to be contrary to law. Contracts illegal by statute are those which infringe some provision which parliament in its wisdom has considered expedient for the preservation of order, the raising of the public revenue, or the protection of particular classes from the fraud, oppression, or competition of others.

3. Of illegal contracts at common law relating to the hire of labour may be instanced a contract to print a libellous and indecent work (the '*Memoirs of Harriette Wilson*'), in which case the printer, who knew its nature, failed to recover the price of the printing.¹ Best, C. J., says—"He who lends himself to that which is contrary to the laws of his country, cannot complain of not being paid for lending himself to that criminal purpose. Every servant, to the lowest, engaged in such a transaction, is prevented from recovering compensation." Any person who contributes to the performance of an illegal act by supplying a thing with a knowledge that it is going to be used for that purpose, cannot recover the price of the thing so supplied.² There must be an intention by the plaintiff to assist in the illegal purpose. Thus a laundress recovered the bill for washing done for a woman whom she knew to be a prostitute. Some of the articles washed were expensive dresses, and others gentlemen's nightcaps. Buller, J.—"This unfortunate woman must have clean linen, and it is impossible for the Court to take into consideration which of the articles were used for an improper purpose and

¹ *Poplett v. Stockdale*, 2 Car. and Payne, 200. Ry. and Moo. 337. Gale and Leckie, 2 Stark. 107.

² *Pearce v. Brooks*, L. R. 1, Ex. 217.

which were not. The plaintiff was employed generally to wash the defendant's linen, and the use which the defendant made of it cannot affect the contract." ¹

4. Contracts in total restraint of trade are also illegal and void by the common law, as oppressive on the party restrained, and injurious to society by depriving it of the industry of one of its members. A contract between a brass-founder and a firm of commission agents, that the firm should employ the brass-founder in executing orders received by them for brass-work, and that the brass-founder should not at any time work for any other person without the consent of the firm, but the firm were at liberty to employ any other person, and the brass-founder was at liberty to execute the order of any person within the city of London or within six miles, was held an unreasonable restraint of trade, and void, because the firm were not bound to find the brass-founder with full employment.² A bond given to a coal-merchant by his clerk, whereby the clerk bound himself not to follow or be employed in the business of a coal-merchant for nine months after he should have left the service of his employer, was held void, as a total restraint of trade for the nine months.³

5. Contracts in partial restraint of trade are sometimes beneficial to trade and industry, instead of being prejudicial, since a tradesman may be enabled to dispose of his business for a valuable consideration, or may be encouraged to take a servant into his confidential employment, if he can secure the purchaser or himself against competition by a contract of this description. To render a contract in partial restraint of trade binding, it should be made upon a good consideration, and

¹ Lloyd v. Johnson, 1 B. and P. 340. Bowry v. Bennett, 1 Camp. 348.

² Young v. Timmings, 1 C. and J. 340. Sykes v. Dixon, 9 A. and E. 693.

³ Ward v. Byrne, 5 M. and W. 548.

the restraint should not be more extensive than necessary for the protection of the party to be secured. Thus a master may lawfully bargain that his servant shall not work for any other person so long as he continues in his employment,¹ or that he shall not work for his customers,² or set up business within a limited distance,³ after he shall have quitted his service. A traveller may be restrained from travelling for any other house in the same trade over any part of the same ground.⁴ On the sale of a manufacture carried on partly under patents, and partly by secret processes, the vendor may restrain himself from carrying on the same business in any part of Europe.⁵

6. A contract which is directly prohibited by statute is void, and cannot be enforced. A contract to do an act which a statute prohibits, or to do an act for the doing of which a statute has imposed a penalty, is by implication prohibited by the statute, and therefore void. A penalty implies a prohibition.⁶

If an act has been done which is expressly or by implication prohibited by statute, no compensation can be claimed for the performance; for either the parties agreed that it should be so done, in which case their contract was void, as contemplating a breach of the law, or the agreement was to do something lawful, and was not performed by the workman. Thus a printer who was employed to print a pamphlet, and did not print his name and place of residence on the first and last

¹ *Pilkington v. Cooke*, 15 M. and W. 657. *Hartley v. Cummings*, 5 Com. Bench, 247.

² *Rannie v. Irvine*, 7 M. and G. 969. *Nicholls v. Stretton*, 7 Beav. 42. 10 Q. B. 346.

³ *Mallan v. May*, 11 M. and W. 668. *Benwell v. Inns*, 24 Beav. 307.

⁴ *Mumford v. Gething*, 7 C. B. N. S. 305.

⁵ *Leather Cloth Company v. Lorstont*, L. R. 9 Eq. 345.

⁶ *Bartlett v. Viner*, Carth. 252. *Cope v. Rowlands*, 2 M. and W. 149.

sheets as required by statute 32 & 33 Vic. c. 34, was held not entitled to recover anything for the printing.¹ The object of the statute being to prevent the publication of libels, was understood as prohibiting the printing of books unless the name and address of the printer was printed thereon previous to publication.

Some Acts of Parliament require qualifications for certain callings. An apothecary must pass an examination by the Apothecaries' Company, and obtain a certificate of his having done so.² Persons in practice prior to the 1st of August, 1815,³ and those who were army or navy surgeons before or on 1st August, 1826, are exempt from this law.⁴ These and all other medical practitioners must be registered.⁵ An attorney or solicitor must be admitted duly and obtain his annual certificate.⁶ No one can draw deeds or legal proceedings for reward, but Counsel, Certificated Attorneys, or Solicitors, or Certificated Members of an Inn of Court.⁷ An appraiser must obtain a licence from the Stamp Office.⁸ A broker in the City of London must be admitted by the Court of Mayor and Aldermen.⁹ In these instances it is illegal for an unqualified person to act in any of the above capacities, and if he does so, he can recover nothing for his services.

The State exercises a paternal care over our amusements, and an agreement to act or sing in an unlicensed

¹ Bensley v. Bignole, 5 B. and Ald. 335. Reference should also be made to 44 & 45 Vict. c. 60. and 51 & 52 Vic. c. 64.

² 55 Geo. III. c. 194, s. 21. *Leman v. Fletcher*, L. R. 8, Q. B. 319.

³ S. 14.

⁴ 6 Geo. IV. c. 133, s. 4. *Steavenson v. Oliver*, 8 M. and W. 234.

⁵ 21 & 22 Vict. c. 90, s. 32.

⁶ 51 & 52 Vic. c. 65.

⁷ 33 & 34 Vict. c. 97, s. 60. *Taylor v. Crowland Gas Company*, 10 Ex. 293.

⁸ 46 Geo. III. c. 43. *Palk v. Force*, 12 Q. B. 666.

⁹ 6 Anne, c. 16, s. 4. *Cope v. Rowlands*, 2 M. and W. 149.

theatre, or place of entertainment, is illegal and cannot be enforced.¹

A contract to erect a building in contravention of the Metropolitan Building Act cannot be enforced.² But if the parties do not contemplate infringing the Act, and it can be modified so as to make it accord with the Act, it will be so enforced.³

It is not every breach of a statute, or omission to comply with its requisites in the performance of a contract, which will render the contract void, or disentitle the party performing it to the price of his labour. The object of the legislature and the motives of the parties to the contract are to be regarded. If the violation of the statute is collateral to the contract, or if in the course of performing the contract a breach of a statute is committed which was not contemplated by the parties when they agreed, the contract is not rendered unlawful. The point to be ascertained is, whether the legislature intended to prohibit the contract. Thus a sale of tobacco by a party who has no licence to deal in that commodity, or who has not his name painted over his door as required by the excise laws, is not void, although the statutes relating to the excise impose penalties on those who deal in tobacco without being licensed, or without having their names painted over their doors.⁴ In these cases the statutory provisions are for the regulation of the general trading of parties, and are collateral to particular contracts, though made in the course of such trading. And the price of spirits sold and delivered without a permit, or with an irre-

¹ 25 Geo. II. c. 36. 6 & 7 Vict. c. 68. *De Beguis v. Armistead*, 10 Bing. 107.

² *Stevens v. Gourley*, 7 C. B. N. S. 99.

³ *Cubitt v. Smith*, 10 Jur. N. S. 1123.

⁴ *Johnson v. Hudson*, 11 East, 180. *Smith v. Mawhood*, 14 M. and W. 452. Per *Tindal, C. J.*, *Ferguson v. Norman*, 5 Bing. N. C. 84.

gular permit, may be recovered, because the violation of the statute was not contemplated by the contract.¹ The parties did not agree to infringe the statute, and were not bound to agree to observe it.

The object of the legislature is also to be considered in determining whether an agreement contrary to statute is void to all intents, or whether the parties are at liberty to make it valid by expressly dispensing with the statute. It seems that when a statute is passed for the purpose of protecting one contracting party from the fraud of the other, the benefit of the statute may be renounced by the party intended to be protected. The statute 17 Geo. III. c. 42, provided that all bricks made for sale should be of certain dimensions. Bricks were sold and delivered of smaller dimensions than specified in the statute, and the seller failed to recover the price; but the Court gave judgment against the seller on the ground that the bricks were bought as bricks of a proper size, and that the buyer did not know them to be of under size.²

But if the object of the legislature is to protect one party from the oppression of the other, in which case it is assumed that the party to be protected is not *sui juris*, or on equal terms with his co-contractor, or to protect the public or third persons, the contract is to all intents void, and no agreement to renounce the benefit of the law can be binding. The Truck Act and other Acts made for the protection of workmen against their employers are statutes of the one sort; the Act regulating printers is an instance of the other.

Such are some of the principles of law as to contracts rendered illegal by statutes which are applicable to contracts for works and services, and the statutes relating to such contracts.

¹ Wetherell v. Jones, 3 B. and Ad. 221.

² Law v. Hodson, 11 East, 300.

7. Amongst the statutes affecting general contracts for works may be mentioned those for the better observance of the Lord's day. At first it was thought sufficient to prohibit shoemakers from exposing to sale shoes, boots, buskins, startops, slippers, or pantofles.¹ The wickedness of carriers, drovers, and butchers next attracted the attention of the legislature, and they were subjected to penalties for following their callings.² Then came the statute 29 Car. II. c. 7, which enacts, that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day, or any part thereof—works of necessity and charity only excepted—it imposes a penalty of 5s.

The Act extends not to prohibit the dressing of meat in families, or dressing or selling of meats in inns, cooks' shops, or victualling-houses, for such as otherwise cannot be provided, nor to the crying and selling of milk before nine in the morning, and after four in the afternoon.

The statute does not include all persons or all works; it extends only to the persons particularly mentioned, and to others of the same class, '*ejusdem generis*.' It has been decided that farmers³ and attorneys⁴ are not within the statute, that a stage-coach proprietor may lawfully agree on a Sunday to carry a passenger on a journey upon that day, and must pay for a post-chaise if he fails to perform his contract.⁵ A farmer may employ himself in making his own hay without

¹ 1 Jac. I. c. 22. Repealed by 48 Geo. III. s. 60, which is repealed by 35 & 36 Vict. c. 97.

² 3 Car. I. c. 2.

³ Rex v. Whitnash, 7 B. and C. 602.

⁴ Peate v. Dickon, 1 C. M. and R. 422.

⁵ Sandiman v. Breach, 7 B. and C. 96.

violating the law. He is not a labourer. A labourer means a person labouring for another: a farmer, a person who may work or not, as he likes; if he sometimes takes up a spade or a rake, he cannot on that account be called a labourer.¹

The works made illegal by the statute are only works done by tradesmen, &c., in their ordinary callings. A contract to do on Sunday work which is not in the ordinary calling of the tradesman, or a contract which is not in his ordinary calling, that is, the usual and every-day course of his business, made on Sunday, is not illegal. Thus a contract by a farmer for the hire of a labourer, made on Sunday, is binding.² A contract by a farmer for letting out his stallion, though the contract be made and the purpose accomplished on Sunday, is according to law.³ The sale of a horse on a Sunday by a person not a horse-dealer is legal;⁴ but the sale of a horse on a Sunday to a horse-dealer is illegal, and no action can be brought for the price of the horse, or on a warranty given at the time of the sale.⁵ The acts done on Sunday by tradesmen in their ordinary calling having simply no legal effect, except to subject them to the penalties imposed by the statute, the fact of a contract having been in part made on Sunday does not affect the validity of anything done on a subsequent week-day; and therefore, if goods are sold and delivered on the day of rest, the sale being simply void, a promise to pay for them on a subsequent week-day is, it seems, binding, as amounting to a new sale.⁶ And if a contract is proposed to be made on a

¹ *R. v. Cleworth*, 4 B. and S. 933. ² *Rex v. Whitnash*, 7 B. and C. 602.

³ *Scarfe v. Morgan*, 4 M. and W. 270.

⁴ *Drury v. Defontaine*, 1 Taunt. 131.

⁵ *Fennell v. Ridler*, 5 B. and C. 406.

⁶ *Williams v. Paul*, 6 Bing. 653. *Simpson v. Nicholls*, 3 M. and W. 240.

Sunday, but completed on another day, it is binding.¹ It seems also, that in the case of a Sunday contract, if it is within the ordinary calling of the one party and not of the other, the party who has infringed the statute is bound by it, and cannot take advantage of his own wrong to excuse himself from its performance; thus, where a horse-dealer sold a horse to a gentleman and warranted it sound on a Sunday, he was held bound by the warranty. The purchaser believed him to be a stage-coachman, and did not know that he was a horse-dealer.² With reference to the exception of works of necessity and charity, it has been decided by the House of Lords that a barber shaving his customers on a Sunday is not a work of "necessity or mercy" within the Scotch statutes on the subject, and which have the same meaning as "necessity or charity," and that therefore he cannot compel his apprentice to do such work on Sunday.³

To apply these cases to contracts for works, it may be taken that if any work is done by a person to whom the statutes extend on a Sunday in his ordinary calling, no remuneration can be recovered for such work; and that if a contract is made for the performance of such work on Sunday, it is illegal, and need not be performed; and if a contract is made on a Sunday with a workman, which contract is within the ordinary calling either of the employer or the employed, it cannot be enforced by the party who has infringed the statute; but if work is on a week-day done and accepted in pursuance of such contract, the acceptance of the work will be equivalent to a new contract made on the week-day to pay the workman a reasonable remuneration for his labour, though it is doubtful whether the trans-

¹ Bloxsome v. Williams, 3 B. and C. 233.

² Ibid.

³ Phillips v. Innes, 4 Cl. and Fin. 231.

action on the Sunday can be referred to at all, either to estimate the price to be paid, or to ascertain the work to be done.

The weekly division of time is singular. Days, months, and years are suggested by natural phenomena: there is nothing to suggest the week. According to the Scripture, it commenced at the creation. It is somewhat difficult to believe that the almighty Creator of the universe made it in six times twenty-four hours, and then rested twenty-four hours before He set it in motion—a motion since incessant; less so to suppose that He taught our first parents to delve and spin for six days and rest on the seventh. Certain it is that, when the Pentateuch was compiled or written, the Jews so counted and used their time, and that the origin of the custom was then unknown. The names by which we individualise its days, derived from the gods of Scandinavian mythology, denote that it prevailed with our ancestors before their conversion to Christianity. We have ten fingers, and count by ten. Acting on this idea, the French Revolutionary Government divided the month of thirty days into three weeks of ten days each.¹ This innovation did not last long—from September 20, 1793, to January 1, 1806.

The week exists, and must be accounted for. It may be accounted for by assuming the Fourth Commandment to be a divine law for the employment of time. The Jews preserved the tables of stone, on which the Commandments were engraved by eternal fingers, with the most scrupulous care. While wandering in the desert, and struggling for the dominion of Judæa, they kept them in the ark. When they thought their government established, they built the Temple to hold them; notwithstanding the tables of stone have crumbled into

¹ Notes and Queries, Fifth Series, vol. i. p. 281.

the smallest dust. St. Paul told the Corinthians that before his time they had been done away.¹ The Commandments have been transferred to the minds of men and carried down the stream of time by tradition (with the aid of copying, printing, and translation), are more permanently preserved than on the tables of stone in the ark, or by the Temple. The efforts of the Puseyites to expel them from our churches, and of the Brightites to exclude them from our schools, are as vain as those of the French Revolutionists to change the week from seven days to ten.

The statute which has suggested these remarks has been in force nearly two hundred years, and the decisions upon it are comparatively few, proving that it has been well observed and agrees with the disposition of the people. With respect to decisions, contrast it with the Statute of Frauds, passed about the same time, two sections of which are shortly noticed further on. It has been said that every word of these sections is worth a subsidy. If this means to the legal profession, it is far short of the truth. More than many subsidies have been spent in litigation over every letter of these celebrated sections, and the reports of the decisions of the disputed points are so numerous that they fill many volumes; and if any one has read them all, he must be an industrious man, and have had a prolonged existence. If the law is codified, we may expect an equal amount of litigation on every branch of it.

8. The statutes which regulate the employment of children and females may also be referred to as imposing restraints upon contracts relating to the hire of labour.

The first statute on the subject is the 42 Geo. III. c. 73, which relates to the employment of apprentices in mills or factories where three or more apprentices,

¹ 2 Cor. iii. 7—11.

or twenty or more other persons, are employed. The subsequent statutes, passed at various times, from 1833 to 1891, are embodied in the Factory and Workshop Act.¹ There are also Acts, for the regulation of coal mines² and metalliferous mines,³ and for regulation of bakehouses.⁴ These contain numerous minute provisions limiting the hours of labour of women and children, and for securing them leisure for their meals, holidays, and half-holidays, and for their safety, education, morals, and health. It is beyond the scope of the present work to go fully into these. But the contracts prohibited, and the places and trades to which the prohibition extends, it may be useful to mention, as showing what contracts are made illegal by the Acts.

The Factory and Workshop Act prohibits the employment of children under the age of ten years, or young persons, in any part of a factory⁵ or workshop in which there is carried on the process of silvering of mirrors or making of whitelead, or melting or annealing of glass. A girl under sixteen cannot be employed for making or finishing of bricks and tiles (not being ornamented) or salt, nor a child for any dry grinding in the metal trade or the dipping of lucifer matches, nor a child under eleven in any grinding in the metal trade other than dry grinding, or in fustian-cutting.

In a factory or workshop to which the Acts of 1878 to 1891 apply no child can be employed—

- (a) During the year one thousand eight hundred and ninety-two if he is under the age of ten years; or,
- (b) After the expiration of that year if he is under the age of eleven years.

¹ 41 Vic. c. 16.

² 30 & 31 V. c. 146.

³ 33 & 34 V. c. 62; 34 & 35 V. c. 104.

⁴ 50 & 51 V. c. 58.

⁵ 35 & 36 V. c. 77.

Provided that any child lawfully employed under the Factory and Workshop Act, 1878, or any Act relating to the employment of children at the time that these provisions came into force, shall be exempt from them.

A child under the age of sixteen cannot be employed in a factory without a medical certificate. In factories no child or young person under sixteen shall be employed for longer than seven days, or (in case the doctor lives over three miles from the factory) thirteen days, unless the occupier has obtained a certificate in due form under the hand of a medical man (appointed certifying surgeon to the district) of fitness for the employment, in which it must be clearly stated that the person is not incapacitated by disease or bodily infirmity for working daily during the regular hours; and the same applies to workshops. All such certificates must be produced to the inspector when called upon.

The employment in coal mines below ground, of boys under the age of twelve years, and above ground of boys under the same age is prohibited.¹ In metalliferous mines below ground, of boys under the age of twelve years; and the employment below ground, in coal mines or mines metalliferous, of girls and women, is also prohibited.²

The Factory Acts, 1878—1891, apply to all textile factories, that is, any premises wherein, or in the close or curtilage of which, steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, China grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material or any fabric made thereof.

¹ 50 & 51 Vic. c. 58, s. 4.

² 35 & 36 V. c. 77, s. 4.

The Acts also apply to non-textile factories, that is to say, the following works, warehouses, furnaces, mills, foundries or places :—print works, bleaching and dyeing works, earthenware works, lucifer-match works, percussion-cap works, cartridge works, paper-staining works, fustian-cutting works, blast furnaces, copper mills, iron mills, foundries, metal and indiarubber works, paper mills, glass works, tobacco factories, letterpress printing works, book - binding works, flax scutch mills ; so, too, to premises or places wherein or within which steam, water, or other mechanical power is used in aid of the manufacturing process carried on there ; as, for instance, hat works, rope works, bake-houses, lace warehouses, ship-building yards, quarries, pit banks.

Premises coming within the Act comprise those also where manual labour is exercised by way of trade or for gain in or incidental to the making of any article, the altering, repairing, ornamenting, or finishing of any article, or the adapting for sale of any article, and wherein or within which steam, water, or other mechanical power is employed. The Act also applies to workshops, that is, the premises enumerated above as hat works and so forth, and which are not a factory within the meaning of the Act, that is to say, do not use power.

Workshops also include premises, rooms, or places wherein manual labour is exercised by way of trade, or for gain in or incidental, like making of articles, the altering, repairing, ornamenting, or finishing of articles or adapting them for sale, and over which premises the employers have right of control. A part of a factory or workshop may be taken to be a separate factory or workshop, but a sleeping-room is not one, nor is a place within a factory solely used for other purposes

than manufacturing processes. Open-air places are a factory or workshop, but not workshops other than bakehouses conducted on the system of not employing any child, young person, or woman.¹ The winding of cotton thread, manufactured elsewhere, is a process incident to the manufacture of cotton, and the place where it is done by steam-power is a factory within the Act.² Weaving or plaiting cotton by steam-power round crinoline skirts is also a manufacture of cotton within the Act.³ Every room within the building, not used as a dwelling-room, is part of the factory, though no steam-power is used in such rooms.⁴

A shipbuilding factory, in which steam is used for cutting and making iron plates, is a factory within this Act. But a ship in the course of building, in which more than fifty persons are employed, is not.⁵ It is decided that the Act is confined to buildings.⁶ Therefore a stone quarry, though it contains sheds, and cement works carried on principally in the open air, and in which there was no great building where workpeople were employed under cover, are not within it.⁷

It might have been thought that it was superfluous to legislate against the employment of children under the age of eight years, especially in the neighbourhood of powerful machinery which they are employed to feed, and by which they are sometimes swallowed. That it was necessary is a melancholy fact. At first the limit was nine years, but when the factory laws were revised in 1844, so valuable was the labour of children between

¹ 54 & 55 V. c. 76.

² *Hayden v. Taylor*, 4 B. and S. 519.

³ *Whymper v. Harney*, 18 C. B. N. S. 243.

⁴ *Taylor v. Hiekes*, 12 C. B. N. S. 152.

⁵ *Palmer's Shipbuilding and Iron Company v. Chaytor*, L. R. 4 Q. B. 209.

⁶ *Kent v. Astley*, L. R. 5 Q. B. 19.

⁷ *Redgrave v. Lee*, L. R. 9 Q. B. 363.

the age of eight and nine, or so cheap, that it was reduced to eight. The bargain in these cases is not with the child, but between a brutal operative and a still more brutal manufacturer, by which the child is sold to slavery.

There is no rule of the common law making a contract with the youngest child illegal. Before the abolition of feudal tenures, when the guardian in chivalry had the disposal in marriage of his female ward, contracts of marriage with or between children under the age of consent (twelve for the female and fourteen for the male) were not unknown nor unrecognised. Lord Coke mentions cases of a wife of the age of seven, and a husband of the age of four. If the wife attained the age of nine before the death of her husband she was entitled to dower, and the bishop was bound to find that they were joined in lawful marriage if she was above nine though under twelve, and though the husband was under fourteen. And the marriage of two little toddling children might have been made the foundation of a divorce suit.¹ Thus we see that the men from whom we inherit our lands dealt with their children in much the same manner as the landless workmen of Lancashire deal with theirs—made the most of them.

The Prevention of Cruelty to Children Act, 1889 (52 & 53 Vic. c. 54), enacts that it is an offence punishable on summary conviction with £25, with or without three months' hard labour, (a) to cause or procure a boy under fourteen or girl under sixteen to be in any street for begging or receiving alms, or inducing the giving of alms, whether under the pretence of singing, playing, performing, offering for sale, or otherwise; or (b) to cause or procure a boy or girl as aforesaid to be in any street or any premises licensed for sale of

¹ Co. Lit. 33. a.

intoxicants (not being licensed for entertainment) for singing, playing, or performing for profit, or offering for sale between 10 P.M. and 5 A.M., or such other extended or restricted hours (if any) as the local authority fixes; or (c) to cause or procure a child under ten to be at any time in any place, street, or premises licensed for the sale of intoxicants or licensed for public entertainments, or any circus or place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering for sale. But the local authority may license for sale a child over seven to take part in entertainments in such premises licensed for public entertainment or circus, or place of public amusement.

The Betting and Loans (Infants) Act, 1892 (55 Vic. c. 4), enacts that if any one in order to earn commission, reward, or other profit, sends to an infant any circular, notice, advertisement, letter, telegram, or other document containing an invitation to make any bet or wager, or apply to any person or at any place for information as to any race, fight, game, sport, or other contingency upon which betting or wagering is carried on, he shall be guilty of a misdemeanour and liable, if convicted on indictment, to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding £100, or to both imprisonment and fine; and if convicted on summary conviction, to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding £20, or to both imprisonment and fine. Similar punishment is awarded to anyone who, for the purpose of earning interest, commission, reward, or other profit, sends to an infant any circular, &c., inviting the borrowing of money, or the application to any person or at any place with a view to obtaining information or advice as to borrowing

money. If any person send such circular, &c., to any person at any university, college, school, or other place of education, and such person receiving them is an infant, the sender will be deemed to know of the infancy unless he can prove otherwise. Similar punishments as before are imposed on any one, except under court's authority, soliciting an infant to make an affidavit or statutory declaration in connection with the loan.

If any infant, who has contracted a loan which is void in law, agrees after he comes of age to pay any money which in whole or part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement, and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement, or otherwise in relation to the payment of money representing or in respect of such loan, is, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, to be void absolutely as against all persons whomsoever. For the purposes of this section any interest, commission, or other payment in respect of such loan is deemed to be a part of such loan.

9. Another important statute affecting the validity of contracts made with workmen is the 1 & 2 Wm. IV. c. 37, commonly called the Truck Act. It is entitled, "*An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of this realm.*" After reciting that "it is necessary to prohibit the payment, in certain trades, of wages in goods or otherwise than in the current coin of the realm," it enacts, "That in all contracts for the hiring of any artificer in any of the trades hereinafter enumerated, or for the performance by any artificer of any labour in any of the said trades, the wages of such artificer shall be made payable in the current

coin of this realm only, and not otherwise ; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be illegal, null, and void.”¹—“If in any contract hereafter to be made between any artificer in any of the trades hereinafter enumerated and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be illegal, null, and void.”²—“The entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise ; and every payment made to any such artificer by his employer of or in respect of any such wages, by the delivering to him of goods, or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be illegal, null, and void.”³—“Every artificer in any of the trades hereinafter enumerated shall be entitled to recover from his employer in any such trade, in the manner by law provided for the recovery of servants’ wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer in such trade as shall not have been actually paid to him by such employer in the current coin of this realm.”⁴—“In any action, suit, or other proceeding to be hereafter brought or commenced by any such artificer as aforesaid against his employer, for the recovery of any sum of money due to any such artificer as the wages of his labour in any of the trades hereinafter enumerated, the defendant shall

¹ S. 1.² S. 2.³ S. 2.⁴ S. 4.

not be allowed to make any set-off nor to claim any reduction of the plaintiff's demand by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff as or on account of his wages, or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer, at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest."¹—"No employer of any artificer in any of the trades hereinafter enumerated shall have or be entitled to maintain any suit or action in any Court of Law or Equity against any such artificer, for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to any such artificer by any such employer whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to any such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest."²

"If any such artificer as aforesaid, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred, such artificer shall have earned or have become entitled to receive any wages for any labour by him done in any of the said trades, which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers or overseer of the poor in such parish or place to recover from the employer of such artificer, in whose service such labour was done,

¹ S. 5.² S. 6.

the full amount of wages so unpaid, and to proceed for the recovery thereof by such ways and means as such artificer might have proceeded for that purpose; and the amount of the wages which may have been so recovered shall be employed in reimbursing such parish or place all such costs and charges incurred in respect of the person or persons so become chargeable, and the surplus shall be applied and paid over to such person or persons.”¹

“Provided that nothing herein contained shall be construed to prevent or to render invalid any contract for the payment or any actual payment to any such artificer as aforesaid of the whole or any part of his wages, either in the notes of the governor and company of the Bank of England, or in the notes of any person or persons carrying on the business of a banker and duly licensed to issue such notes in pursuance of the laws relating to His Majesty’s revenue of stamps, or in drafts or orders for the payment of money to the bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid; but all payments so made, with such consent as aforesaid, in any such notes, drafts, or orders as aforesaid, shall, for the purposes of this Act, be as valid and effectual as if such payments had been made in the current coin of the realm.”²

By the Truck Amendment Act of 1887 it is provided that its provisions, and those of the Act of 1831, are to extend to, and include, any workman as defined by the Employers and Workmen Act, 1875 (*see* Appendix). In the case of an advance in wages employers are for-

¹ S. 7.

² S. 8. Ss. 9 to 18 relate to penalties, their recovery and application. See also Truck Act Amendment Act, 1887 (50 & 51 Vict. c. 45).

bidden from making deductions save as regards covenants in husbandry. Orders for goods as a deduction from wages are considered illegal, and so are contracts with workman as to spending wages at any particular shop or particular manner. In the case of deductions from workman's wages for education, the workman is entitled to have his child's school fees paid by employer. No deduction from wages is permissible for repairing or sharpening tools. All receipts and expenditure in respect of deductions have to be duly audited. Articles under the value of £5 made by a person at his own house or otherwise by himself or the members of his family come within the Act. These articles comprise goods knitted or otherwise manufactured of wools, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone, thread, silk, or cotton lace, or of lace made of mixed materials. Penalties are imposed on employers or agents contravening the provisions. A person engaged in the same trade as an employer charged with an offence cannot act as a Justice of the Peace in hearing and determining such charge.

“Nothing herein contained shall extend to any domestic servant or servant in husbandry.”¹

“Nothing herein contained shall extend or be construed to extend to prevent any employer of any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificer be employed

¹ 1 & 2 W. IV. c. 37, s. 20. Ss. 21 and 22 relate to the magistrates qualified to act in enforcing penalties. See also Truck Act Amendment Act, 1887 (50 & 51 Vic. c. 46).

in mining, or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade or occupation; nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in this Act, the whole or any part of any tenement, at any rent to be therein reserved; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer; nor from making nor contracting to make any stoppage or deduction from the wages of any such artificer for or in respect of any such rent, or for or in respect of any such medicine or medical attendance, or for or in respect of such fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of any such artificer for any such purpose as aforesaid: Provided always, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of any such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer.”¹

“Nothing herein contained shall extend, or be construed to extend, to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or

¹ 1 & 2 W. IV. c. 37, s. 23. An agreement to deduct rent need not be in writing: *Chawner v. Cummings, post.* See also secs. 8 and 9 of Truck Act, 1887, in Appendix.

children of any such artificer, nor from deducting or contracting to deduct any sum or sums of money from the wages of such artificer for the education of any such child or children of such artificer, and unless the agreement or contract for such deduction shall be in writing, and signed by such artificer.”¹

“In the meaning and for the purposes of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any work, employment, or operation of what nature soever, in or about the several trades and occupations aforesaid, shall be and be deemed ‘artificers’; and within the meaning and for the purposes aforesaid, all masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers, shall be and be deemed to be ‘employers’; and within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, shall be deemed and be taken as the ‘wages’ for such labour; and within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever, on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a ‘contract.’”²

¹ 1 & 2 W. IV. c. 37, s. 24. See also secs. 7, 8, 9 of Truck Act, 1887 (50 & 51 Vict. c. 46), in Appendix.

² 1 & 2 W. IV. c. 37, s. 25. See Truck Act, 1887 (50 & 51 Vic. c. 46), in Appendix.

There have been numerous decisions under these statutes, many of which will be found noted in the Table of Cases, *supra*.

With regard to the statute 1 & 2 William IV. c. 37, it has been decided, that, with the exception of the 23rd section, it prohibits the *payment* only of wages otherwise than in money, and does not apply to deductions or charges upon wages which are agreed to at the time between the master and the workman, or which are according to the usage of trade (such usage being, in effect, part of the agreement between the parties). In this case, the balance remaining after the deduction or charge is the amount payable as wages.

A frame-work knitter was employed in weaving gloves by a middle-man, to be paid an agreed gross price per dozen pairs of glove-fingers made by him, subject to certain charges and deductions, viz., 1s. 6d. per week for the use of the frames, which were furnished by the employer; 1s. 6d. per week as a remuneration for the use of the employer's premises in which the work was to be performed, for the standing-room of the frame, and for the trouble and loss of time of the employer in procuring and conveying the materials, and for his responsibility to the master manufacturer for the due return of the manufactured articles, for sorting the goods and re-delivering them at the warehouse of the master manufacturer; 7d. per week for winding the yarn, which operation was performed by a child, whose wages were 6d. per week, and the remaining penny was for the use of the winding machinery; and 1d. in each shilling on the amount of the workman's earnings above 14s. per week, as a compensation to the middle-man for a per-centage paid to the master manufacturer on the amount of goods manufactured by machinery rented by him. These deductions were held not con-

trary to the Truck Act. It was also determined that they were not stoppages or deductions for which an agreement in writing was required by the 23rd section.¹

In another case, it was decided, that the statute is confined to persons who enter into contracts to employ their personal services, and to receive payment for such service in wages; and therefore that a sub-contractor for excavating a certain portion of railway cutting, who employed labourers to assist him in the performance of his contract, was not a labourer within the meaning of the Truck Act, although he did part of the work himself.²

But if by the contract the workman is bound to give his personal labour, although it may be a contract to do so much work, and he may be at liberty and does employ others to assist him, it has been held that he is within the protection of the Act.³

The amount of deductions allowed by section 23 need not be specified in the written agreement. It is sufficient if the workman agrees generally that the master may make deductions from his wages for such matters.⁴ There must be a written agreement to authorise a deduction under ss. 23 and 24, for medical expenses or education.⁵ A deduction of 6*d.* a week for a contribution to a medical fund is legal.⁴ The supply of materials mentioned in section 23 means materials sold to the workman, and not merely goods let to him. If materials are supplied under a written agreement, it lies on the master to prove that the true value only is charged.⁶

¹ *Chawner v. Cummings*, 8 Q. B. 311. *Archer v. James*, 2 B. and S. 61. *Moorhouse v. Lee*, 4 F. and F. 354.

² *Riley v. Warden*, 2 Excheq. 59. *Sharman v. Sanders*, 13 C. B. 106. *Ingram v. Barnes*, 7 E. and B. 115. *Sleeman v. Barrett*, 2 H. and C. 934.

³ *Floyd v. Weaver*, 16 Jur. 289. *Bowers v. Lovekin*, 6 E. and B. 584.

⁴ *Cutts v. Ward*, L. R. 2 Q. B. 357.

⁵ *Pillar v. Lynvi Coal Company*, L. R. 4 C. P. 752.

⁶ *Cutts v. Ward*, L. R. 2 Q. B. 357.

It seems that, although the wages are paid in money, if any constraint is put on the workman by the master, or those authorised by him, to induce the workman to spend it in a shop in which the master is interested, the payment is not sufficient. The coercion must come from the master. He is not bound by the acts of persons not authorised to hire or discharge the workmen, such as a clerk or overseer.¹ If the master has given goods instead of money in payment of wages, he has incurred a penalty under the Act, and this is not purged by the subsequent payment of the wages in money or their recovery by the workman by action at law.²

Chawner v. Cummings, *Archer v. James*, and *Moorhouse v. Lee* were decisions on a custom in the hosiery manufacture. It has been put an end to by 37 & 38 Vic., c. 38 (passed 30th July, 1874), which enacts as follows:—

“1. In all contracts for wages the full and entire amount of all wages and earnings of labour in the hosiery manufacture shall be actually and positively made payable in net, in the current coin of the realm, and not otherwise, without any deduction or stoppage of any description whatever, save and except for bad and disputed workmanship.

“2. All contracts to stop wages, and all contracts for frame rents and charges, between employer and artificers, shall be and are hereby declared to be illegal, null, and void.

“3. If any employer shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said

¹ *Olding v. Smith*, 16 Jur. 496.

² *Wilson v. Cookson*, 13 C. B. N. S. 496.

artificer or any other person suing for the same in the county court in the district where the offence is committed, with full costs of suit.

“4. If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employer, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the county court for the district where the offence shall have been committed, with full costs of suit.

“5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

“6. Nothing in this Act contained shall extend to prevent the recovery in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

“7. Within the meaning and for the purposes of this Act, all workmen, labourers, and other persons in any manner engaged in the performance of any employment or operation, of what nature soever, in or about the hosiery manufacture, shall be and be deemed ‘artificers;’ and, within the meaning and for the purposes aforesaid, all masters, foremen, managers, clerks,

contractors, sub-contractors, middlemen, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers shall be and be deemed to be 'employers;' and, within the meaning and for the purposes of this Act, any money or other thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, shall be deemed and taken to be the wages of such labour; and within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificers are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a 'contract.'

"8. This Act shall not commence or take effect till the expiration of three calendar months next after the day of passing the same."

10. Illegal contracts are sometimes divisible, that is, good in part, and bad in part; and sometimes indivisible, or entirely bad.

Where two acts are agreed to be done, one legal and the other illegal, the contract is divisible, and good as to the legal act, but bad as to the other. Thus, where on the sale of a business the seller agreed not to carry on business within London or 600 miles thereof, the contract was held good so far as it restrained him from carrying on business in London, such being a reasonable restraint of trade, but void as to the 600 miles.¹

¹ *Mallan v. May*, 13 M. and W. 517. *Green v. Price*, 13 M. and W. 695. *Price v. Green*, 16 M. and W. 346.

But if a single act is agreed to be done, or a sum of money to be paid in consideration of something illegal and something legal, the whole is void;¹ because the act to be done or money to be paid is in part a reward for an illegal act, and it cannot be ascertained what part or how much is to be done or paid for the legal and what part or how much for the illegal act.

It may be illegal on one side and not on the other. If one party intends to violate the law and the other does not, and is ignorant of the illegal purpose, the innocent party can enforce the contract and the guilty cannot.²

11. Imperfect contracts are—1, contracts made without consideration; 2, contracts made with incapable persons; 3, contracts obtained by undue means; 4, contracts not sufficiently authenticated.

Contracts considered with reference to the solemnity of their execution are of two sorts,—specialties or simple contracts. A specialty must be in writing, on paper or parchment, and sealed and delivered as a deed: a simple contract may be either in writing or verbal.

What a party agrees to do by deed, he is bound to perform, although his agreement is unilateral, that is, without anything being given or done, or agreed to be given or done, by the other contracting party: thus, if a man by deed agrees to build a house, he must do so, although he is to receive nothing for his pains. A specialty is higher in class and degree than a simple contract; and if a man first agrees to do a thing by a simple contract, and subsequently agrees to do the same thing by deed, the agreement by simple contract is merged and extinguished by the contract by deed. On the other hand, if he first agrees to do a thing by deed, and afterwards a simple contract is made that he shall

¹ *Scott v. Gilmore*, 3 Taunt. 226.

² *Bloxsome v. Williams*, 3 B. and C. 234. *Clay v. Yates*, 1 H. and N. 73. *Cowan v. Millbourn*, L. R. 2 Ex. 230.

do something in lieu of the thing covenanted to be done, he is bound to perform his covenant notwithstanding. A subsequent specialty extinguishes a simple contract, but a subsequent simple contract cannot vary or alter the obligation of a deed. Contracts by deed are called covenants; simple contracts are called promises or agreements.

12. Simple contracts are not binding unless founded upon a consideration, which is defined to be something given or done, or agreed to be given or done, by the promisee, beneficial to the promiser, or prejudicial to the promisee. There must be something given or done, or agreed to be given or done, by each party to the contract. The performance of a gratuitous unilateral promise is as gratuitous or honorary as the promise: this is either founded on the notion that it is not the intention of the parties that such a promise shall be binding and irrevocable, or on the notion that the party with whom the promise is made, and who neither gives nor agrees to give anything in exchange for it, loses nothing by the promise not being performed.

An action was brought against a carpenter, who had been retained by the plaintiff to repair his house before a given day, and had accepted the retainer, but did not perform the work, whereby the plaintiff's house was damaged. The action was held not maintainable, because it did not appear that the defendant was to receive any consideration, or that he had entered upon the work: had he entered upon the work, the plaintiff suffering him to do it would have been a sufficient consideration for an agreement by him to do it properly.¹

In another case, the defendant agreed to remain with the plaintiff two years for the purpose of learning the business of a dress-maker, and left the service

¹ Elsee v. Gatward, 5 D. and E. 143.

before the expiration of the term. The Court held that she was not liable to an action, because there was no agreement on the part of the plaintiff to teach or employ her.¹

In *Sykes v. Dixon*,² Bradley agreed to work for Sykes in making powder-flasks, and for no other person, for twelve months: he left Sykes' service within twelve months, and entered into the service of Dixon. The Court held that no action could be maintained against Dixon for harbouring Bradley, because the agreement was void for want of consideration, there being no agreement on the part of Sykes to employ Bradley. And although it was urged that an agreement to pay Bradley for his work would be implied, which would form a sufficient consideration, the Court said that would be the same in any service to which Bradley might engage himself, and was no consideration for the contract to serve for a specified time. The obligation to pay wages would arise from the service performed, and not before, and there was no express agreement to pay wages for the period during which Bradley agreed to serve. In these two cases the agreements were not signed by the master. If he had signed or agreed to the agreement, an engagement by him to employ would have been implied.³

A promise to reward a man for doing that which he is under a previous obligation to do is without consideration. The master of a ship promised to pay a seaman five guineas above his wages for doing some extra work in navigating the ship. The promise was void, because the seaman was previously bound to obey all the master's orders in navigating the vessel.⁴

¹ *Lees v. Whitecomb*, 5 Bing. 34.

² 9 A. and E. 693.

³ *Whittle v. Frankland*, 2 B. and S. 49.

⁴ *Harris v. Watson*, Peake, 102.

In the course of a voyage some seamen deserted, and the captain promised to divide their wages amongst the rest of the crew. Lord Ellenborough held the promise to be void for want of consideration, saying, "Before the ship sailed from London, the sailors had undertaken to do all they could, under all the emergencies of the voyage: they had sold all their services until the voyage should be completed. If the captain had capriciously discharged the two men who were wanting, the others might not have been compellable to take the whole duty upon themselves, and their agreeing to do so might have been a sufficient consideration for the promise of an advance of wages."¹ If any extra service or extra risk be incurred beyond the risk agreed, and if the ship in the course of the voyage is undermanned, there is a consideration for an extra reward.²

13. It is essential to every contract that there should be two parties to it, and it is essential to the legal validity of every contract that each party to it should be in law competent to contract. If either party is incompetent, the contract is imperfect. Of such contracts, some are void and incapable of being confirmed or enforced; others are voidable and capable of being confirmed.

A married woman is incompetent to contract, and her contract is at law absolutely void. This is because she is incapable by law of possessing property during her coverture, and therefore cannot have the means of performing a contract. She is competent to contract if the marriage is dissolved by decree of the Divorce Court, or if a judicial separation is decreed during the separation, or if she obtains a protection order from the

¹ *Stilk v. Myrich*, 2 Camp. 317; 6 Esp. 129.

² *England v. Davidson*, 11 A. & E. 856. *Clutterbuck v. Coffin*, 3 M. and G. 842. *Hartley v. Ponsonby*, 7 E. and B. 872.

Divorce Court or a magistrate during its continuance.¹ If the husband has been convicted of felony and transported, during his sentence, which is civil death, she is capable of contracting. She is capable of acting as agent for her husband, or any other person, in making a contract: in such case the principal, and not the married woman, is at law the party to the contract. That was the law prior to 1882; now, however, she is entitled to more extended privileges, and can contract to the extent of her separate property. She can also be sued in respect thereof.

14. Although a person who is incapable of understanding the nature of a contract, from insanity or drunkenness, cannot give that consent which is usually essential to a contract, yet if the other party is ignorant of his incapacity, and the contract is executed, it is binding on the lunatic. There is an apparent though not an actual consent by both parties, and it is more reasonable that he should be bound than that the other party, who trusted to his apparent capacity, should suffer. The lunatic cannot in such case repudiate the contract and recover money he has paid under it, and if he has received the consideration he must pay the price.² The same principle may apply to executory contracts, though it has not as yet been extended to them. But if the other party has notice of the insanity or drunkenness, the contract is invalid,³ and perhaps for necessities furnished for the lunatic not under control he may be liable, though the party furnishing them know him to be a lunatic.⁴

15. The contracts of infants, or persons under the

¹ 20 & 21 Vict. c. 85, ss. 21 & 26; 21 & 22 Vict. c. 108, s. 8.

² *Molton v. Camroux*, 2 Ex. 487; 4 Ex. 17. *Beavan v. M'Donnell*, 9 Ex. 209. *Campbell v. Hooper*, 1 Jur. N. S. 670.

³ *Gore v. Gibson*, 13 M. and W. 623. *Brandon v. Old*, 3 C. and P. 440.

⁴ *Howard v. Digby*, 2 Cl. and Fin. 621.

age of twenty-one years, are in some cases valid, in some voidable, and in some void.

Contracts to pay a reasonable price for necessities supplied to the infant or his family are binding on him. Necessaries include necessary meat, drink, apparel, physic, and good teaching and instruction, whereby he may profit himself afterwards.¹ But if an infant has houses, and it is necessary to put them in repair, and he makes a contract for the repairs, he is not bound. No contract binds him but such as concerns his person.² The infant who has property ought to have a guardian to take care of it.

An agreement to serve for wages is, according to the opinion of Lord Abinger, generally speaking, binding on an infant,³ assuming, of course, that his station in life renders it necessary for him to earn his livelihood during his infancy; and if an infant labourer deserts his service, he may, it has been said by Bayley and Littledale, JJ., be punished under the Master and Servants' Act.⁴ But if the terms of the agreement are inequitable, and not beneficial to the infant, the agreement is void, and he cannot be punished for its breach: as if the agreement professes to bind the infant to serve for a term, but leaves the master free to stop his work and wages whenever he chooses.⁵

According to Fitzherbert, an infant of the age of twelve is bound by his covenant to serve in husbandry.⁶ The Factory Acts may perhaps be considered as recognising the validity of the contracts to serve by infants of the age of eleven years.

¹ Co. Lit. 172, a.

² Per Haughton, J., *Tirrell's case*, 2 Rol. Rep. 271. Anon. 3 Salk. 196.

³ Per Lord Abinger, *Wood v. Fenwick*, 10 M. and W. 204.

⁴ Per Bayley, J., and Littledale, J., *Rex v. Chillerford*, 4 B. and C. 101.

⁵ *Reg. v. Lord*, 12 Q. B. 757.

⁶ F. N. B. 168.

The authority of Fitzherbert ought perhaps to be understood as confined to simple contracts of infants, since it has been held that a covenant by an infant in an apprentice deed is voidable by him.¹ The reason that an infant cannot bind himself by deed may be that the validity of his contracts depends upon the nature and amount of the consideration, and in contracts by deed the consideration is immaterial. There is said to be a custom of London by which an infant may bind himself by an apprenticeship indenture to continue after he is twenty-one. This custom is so variously stated in the Reports that it may be doubted whether it has been sufficiently uniform from time immemorial to be good, or, if uniform, whether it is not bad as unreasonable.² By the general law, though he cannot be sued on his covenant, he is bound by the indenture of apprenticeship to serve his master,³ but not after he is twenty-one.⁴

A deed which may be beneficial to an infant is merely voidable by him, and, until avoided, it stands good. An infant slave in the West Indies entered into a deed by which he covenanted to serve his master for a certain term: the Court held that it was not void, because it was beneficial to the infant, inasmuch as it operated to emancipate him, and therefore a party who had seduced the infant from the service of his master was liable to an action.⁵

[*See Infants' Relief Act, 1874 (37 & 38 Vic. c. 62), in Appendix.*]

¹ *Gylbert v. Fletcher*, Cro. Car. 179.

² 21 Edw. I. 6 pl. 17. *Stanton's Case*, Moor, 135. *Walker v. Nicholson*, Cro. El. 652. *Burton v. Palmer*, 2 Bulst. 191. *Code v. Holmes*, Palm. 361, 2 Rol. 305. *Mould v. Wallis*, 1 Keb. 376, 512. *Horn v. Chandler*, 1 Mod. 271; 2 Keb. 687. *Com. Dig. London*, N. 2. *Eden's case*, 2 M. and S. 226.

³ *Rex v. Arundel*, 5 M. and S. 257. *Cooper v. Simmons*, 6 H. and N. 707.

⁴ *Exp. Davis*, 6 D. and E. 715. ⁵ *Keane v. Boycott*, 2 H. Bl. 511.

But a contract which the Court can pronounce to be prejudicial to the infant is void, as is a bond with a penalty.¹

16. If any fraud is practised by one party on the other in inducing him to enter into a contract, the contract may be avoided by the party defrauded. Fraud consists in some false statement which the party making it knows to be false, or some studied concealment or suppression of a material circumstance by which the other party is deceived. If the statement is obviously false, or the truth can be ascertained by the exercise of ordinary caution, the contract is not void for fraud. If a man is injured by a contract made upon such a statement, it is rather the effect of his own carelessness than of the fraud of the other. Thus, where a carrier agreed with the defendant to carry a load of wool at so much a hundredweight, and inquired of him how much it weighed, and the defendant said 8 cwt. (the wool, in fact, weighed 2000 lbs., and in consequence the carrier's horses were overstrained and killed), the Judges intimated their opinion that the carrier had no remedy, because he was in default in not weighing the goods before he received them; and he abandoned his action.²

A person who by false and fraudulent representations of his ability to cure a cancer without cutting, by means of sovereign remedies, induced another, afflicted with that disease, to employ him, was held not entitled to recover any remuneration for his services or medicines, by reason of the contract of employment being void for fraud.³

The fraud of the fraudulent party entitles the party

¹ Baylis v. Dyneley, 3 M. and S. 481.

² Baily v. Merrell, 3 Bulst. 94. Thwaites v. Mackerson, 3 C. and P. 341.

³ Hupe v. Phelps, 2 Stark. 480.

defrauded to avoid the contract so soon as he discovers the fraud, and he cannot be compelled to perform it, and may maintain an action to recover any damage he has sustained by reason of the fraud. But if he does perform his part of the contract, he cannot sue the other party upon any other contract than that actually made. A man agreed to cart away some rubbish for £15, in consequence of a fraudulent representation by his employer as to the depth of the rubbish. He performed the work, and claimed £20 as the value of his labour. It was decided that he was not entitled to more than the agreed price, since although the fraud of the defendant entitled him to avoid the contract, it did not authorise him to impose on the defendant terms to which he had not agreed: there being an express agreement as to the price, the law would not imply one. Parke, B., said, "Upon discovering the fraud, the plaintiff should immediately have declared off, and sought compensation in an action for deceit."¹

If, after discovering the fraud, the party defrauded proceeds with the contract, or does any act by which he treats it as valid, he is bound by it. The election which the law gives to avoid the contract is an election which he may waive when he knows of his situation.² In cases of fraud, the contract is imperfect because of the want of the free consent of one of the contracting parties: when the party defrauded, after discovering the fraud, assents to the contract, he supplies the free consent which was wanting, and the contract becomes perfect.

17. Of contracts which are imperfect by reason of not being properly authenticated, may be instanced the

¹ *Selway v. Fogg*, 5 Mee. and Wels. 83. *De Symons v. Minchwich*, 1 Esp. 430.

² *Campbell v. Fleming*, 1 Ad. and El. 40.

simple contracts of corporations. A corporation is an artificial being, or body politic, existing by prescription, or created by charter, or Act of Parliament, or by registration under the Joint Stock Companies' Act. Railway companies are corporations by Act of Parliament: so are the guardians of the poor-law union. In the case of a corporation, the community has a legal existence distinct from the individuals composing it, and may possess property and make contracts which are binding on the corporate property.

With reference to contracts there is a distinction between corporations established for the purposes of government, of which nature are municipal corporations, the Metropolitan Board, boards of works, vestries, local boards, boards of guardians, &c., which have to be satisfied out of property with which they have been endowed for public purposes, or the rates they are empowered to levy on the portion of the public who are subject to them, and corporations established for trading purposes, such as railway and other like companies, and companies registered under the Joint Stock Companies' Acts, and which have to be satisfied out of the joint stock of the company, subscribed for the purpose of carrying on businesses with a view to profit.

A municipal corporation cannot bind themselves to pay a sum of money out of the corporation funds for making improvements within the borough unless the contract is under the common seal. The exceptions to the rule that a corporation can only bind itself by deed are—1. Cases so constantly occurring, and of such small importance, or so little admitting of delay, that to require in every such case the previous affixing of the seal, would be greatly to obstruct the every-day ordinary convenience of the body corporate, without any adequate object, in which instances the head of the corporation is

considered as delegated by the rest of the members to act for them. 2. The instances of trading corporations.¹ The guardians of Billericay Union made a contract by deed with Mr. Lamprell, a builder, for building their union workhouse. The works were to be done under the superintendence of Messrs. Scott and Moffat, architects, and it was provided that if the architects required alterations or additions in the progress of the works, they should give Lamprell written instructions for the same, signed by them, and that he should not be deemed to have authority to do such additional works without such written instructions. The contract price was £5,500. Many extra works were done, which were valued by Scott and Moffat at £3,133, and there were several letters, some from Scott and some from Moffat, approving of the extra works. The guardians had paid £6,300, and had accepted and acquiesced in the additional works. An action was brought by Lamprell against the guardians for the balance of the contract price and the extra works. The Court of Exchequer, with great reluctance, decided against him, saying that his claim was apparently the most just and reasonable. The ground of the decision was, that the guardians, being a corporation, could only be bound by the deed, and the orders for the extra works were not according to the deed. They held that a written order signed by one of the architects was not sufficient to render the guardians liable, the deed requiring it to be signed by both; and that a writing signed by the architects during the progress of the extra works, or after their completion, was not sufficient. They also held that Lamprell could not appropriate the payments to the extra works, although made generally on account,

¹ Mayor of Ludlow v. Charlton, 6 M. and W. 815. 1 Williams's Notes to Saunders, 616. Note to Mellor v. Spateman.

because there was no liability on the part of the guardians to pay for any of the extras.¹

So the guardians of a union were not bound by the appointment of a clerk or assistant to the master of the workhouse, whose duties were principally the keeping of accounts of a somewhat complicated nature, requiring some amount of skill and capacity.²

The hiring of a butler or cook, or the appointment of a bailiff to take cattle damage feasant, by a municipal corporation, is within the exception as a matter of frequent and ordinary occurrence, and need not be under seal.³ So the supply of goods or rendering of occasional services necessary to be from time to time supplied or rendered, and which have been supplied or rendered under a contract in fact, made by the managing body of the corporation, is binding, though the contract is not by deed.⁴ But the making a plan of one of the parishes of the union was held not to be necessary for the guardians of the union, nor incidental to the purposes for which they were created, and therefore they were not liable on a verbal order to pay for such plan.⁵

18. Trading corporations are liable on all contracts entered into for the purpose for which they are incorporated, though not under seal. It can only carry on business by agents, managers, and others, and if the contracts made by these persons are contracts which relate to objects and purposes of the company, and are not inconsistent with the rules and regulations which

¹ *Lamprell v. Guardians of Billericay Union*, 3 Ex. 283.

² *Austin v. Guardians of Bethnal Green*, L. R. 9 C. P. 91.

³ *Bac. Abr. Corporation*, E. 3.

⁴ *Sanders v. St. Neot's Union*, 8 Q. B. 810. *Clarke v. Cuckfield Union*, 1 L. and M. 81, 21 L. J. Q. B. 349. *Haigh v. Bierley Union*, E. B. and E. 873. *Nicholson v. Bradfield Union*, L. R. 1 Q. B. 620.

⁵ *Paine v. Strand Union*, 8 Q. B. 326.

govern their acts, they are valid and binding on the company, though not under seal.¹ But a preliminary agreement to execute a contract under seal for a commercial company has been held not to be binding, the intention being that there should be a contract under seal.²

19. By the Companies' Clauses Consolidation Act, which relates to most companies constituted by private Acts of Parliament, in and since 1845, such as railway companies, &c., contracts may be made by the directors or committee so as to bind the company, either by deed or writing, or word of mouth, in the same cases in which contracts by deed or writing or word of mouth are binding on individuals.³

By the Companies' Act, 1867, relating to companies incorporated by registration, contracts, which if made by private persons should be under seal, may be under the common seal of the company. Those which between private persons should be in writing or by parol, may be made for the company by any person acting under their express or implied authority.⁴

Under these Acts companies are bound by the contracts of their agents acting in the usual course of their business, and within the general or apparent scope of their authority. And their authority may be inferred from goods and work necessary for their business being accepted and used by them or their agents at their place of business.⁵ In a case in which there

¹ *South of Ireland Colliery Company v. Waddle*, L. R. 3 C. P. 469; 4 C. P. 617. *Henderson v. Australian Royal Steam Navigation Company*, 5 E. and B. 409. *Reuter v. Electric Telegraph Company*, 6 E. and B. 341.

² *London Dock Company v. Sinnot*, 8 E. and B. 347.

³ 8 & 9 Vict. c. 16, s. 97.

⁴ 30 & 31 Vict. c. 131, s. 37.

⁵ *Smith v. Hull Glass Company*, 11 C. B. 897. *Pauling v. London and North-Western Railway Company*, 8 Ex. 867, per Lord Cranworth. *Greenwood's Case*, 18 Jur. 391. 3 De G. M. and G. 459. *Walker v. Great Western Railway Company*, L. R. 2 Ex. 228.

was a contract under seal with a company, governed by the Companies' Clauses Act, for the erection of pumps, engines, and machinery, extra works were done under the directions and with the approval of the company's engineer, it was decided that the company was not liable; it being considered that the engineer was not the agent of the company to order the extra works.¹

These Acts being in the affirmative do not prevent contracts made in other modes being binding and effectual, when there is power to make them, and do not exclude any equity which may have existed before these provisions were introduced.²

20. The Public Health Act directs that a local board of health may enter into contracts for carrying the Act into execution, and that every contract, the value or amount of which exceeds £50, shall be in writing, and sealed with the common seal; and shall specify the work, materials, matters, or things to be so furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and fix some pecuniary penalty to be paid in case the terms of the contract are not performed. It also provides that, before contracting for works, the board shall obtain an estimate from the surveyor, &c.³ These preliminaries as to the estimate, &c., are directory on the Board of Health, and, if neglected, do not render the contract invalid, and the board may be sued on the contract, although it is provided that they shall not be personally liable.⁴

¹ Homersham v. Wolverhampton Waterworks Company, 6 Ex. 147.

² Wilson v. West Hartlepool Railway and Harbour Company, 2 De G. J. and S. 475, 11 Jur. N.S. 126.

³ 38 & 39 Vic. c. 55.

⁴ Nowell v. Mayor of Worcester. 9 Ex. 457. See also Cole v. Green, 6 Man. and Grang. 872.

The provision as to the seal is essential. The section alone confers on the local board the power of entering into contracts, and they must exercise that power in the terms in which it is by the Act conferred upon them.¹

If a corporation have performed its part of a contract, or does not object to the contract, the other party cannot object that the contract ought to have been, and was not, by deed.²

21. In cases in which the corporation is not bound at law because the contract is not under seal, and the claim of the plaintiff is for a simple money demand, he can have no relief in equity to enforce the contract; the non-payment of the price of work which has been done for them, and of which they have accepted the benefit, is not a fraud against which equity will relieve.³ But if it is a case in which equity has jurisdiction as to decree specific performance, or as a matter of complicated account, and there has been what a court of equity considers fraud on the part of the corporation, they have jurisdiction. Thus a party who has been let into possession of land by a railway on an agreement, cannot be turned out of possession, and be liable to be treated as a trespasser, on the ground that there was no agreement. It is in the eye of a court of equity a fraud to set up the absence of an agreement when possession has been given on the faith of it;⁴

¹ *Frend v. Dennett*, 4 C. B. N. S. 576. *Rutledge v. Farnham Board of Health*, 2 F. and F. 406.

² *Mayor of Carmarthen v. Lewis*, 6 C. and P. 608. *Ranger v. Great Western Railway*, 5 House of Lords, 101. *Fishmongers' Company v. Robertson*, 5 Man. and Gr. 181. *Australian Navigation Company v. Marzotti*, 11 Ex. 228.

³ *Kirk v. Bromley*, 2 Ph. 640. *Ambrose v. Dunmow Union*, 9 Beav. 108. *Crampton v. Varna Railway Company*, L. R. 7 Ch. 562.

⁴ *Wilson v. West Hartlepool Railway and Dock Company*, 2 De G. J. and S. 475.

and in case of a complicated account for works done for a railway company, Turner, L. J., said, "In my opinion companies, no less than individuals, must be answerable to the jurisdiction of this Court in cases of fraud; and I think that in the eye of this Court, at least, it would be a fraud on the part of this company to have desired by their engineer these alterations, additions, and omissions to be made, to have stood by and seen the expenditure going on upon them, and then to refuse payment on the ground that the expenditure was incurred without proper orders having been given for the purpose."¹ And a municipal corporation were compelled to grant a term pursuant to a resolution entered in their books, when they had allowed a wall to be built and money to be expended on the land on the faith of it.²

22. Some contracts are required by the statute law to be in writing. Such contracts, if not in writing, as required by the statute, are imperfect, and cannot be enforced.

The statutes which require contracts for works to be in writing are the Statute of Frauds, 29 Car. II. c. 3, and Lord Tenterden's Act, 9 Geo. IV. c. 14.

By the 4th section of the Statute of Frauds, "No action shall be brought upon any agreement that is not to be performed within a year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some person by him thereunto lawfully authorised."

An agreement to hire a servant for a year, to com-

¹ Hill v. South Staffordshire Railway Company, 11 Jur. N. S., 193.

² Crook v. Corporation of Seaford, L. R. 6 Ch. 551.

mence on a future day, is within this statute;¹ but an agreement for a year's hiring, commencing at the time of making the agreement, which is the contract usually implied from a general hiring of a clerk or servant, is not.²

If the agreement is to be performed upon an event which may or may not happen within a year, as upon the death or marriage of one of the parties, it is not within the statute, and therefore need not be in writing.³

A stipulation in the contract making it defeasible within the year, does not take it out of the statute. Thus an agreement for the hire of a commercial traveller, made on the 2nd October, 1854, for his services from then until the 1st September, 1855, and from thence for a year, unless the employment was determined by three months' notice, was not enforceable because not in writing.⁴

The fact of the agreement being in part performed does not take it out of the statute.⁵ But if an agreement is entirely executed on one part within a year, it is not within the statute, and the party who has fully performed his part may sue the other on the agreement, although it is not in writing.⁶ To actions upon executed considerations, that is, to actions for the price of works which have been performed, whether performed within a year or beyond, the statute does not

¹ *Bracegirdle v. Heald*, 1 B. and Ald. 722. *Snelling v. Lord Huntingfield*, 1 C. M. and R. 25.

² *Beeston v. Collyer*, 4 Bing. 309. *Cawthorne v. Cordrey*, 13 C. B. N. S. 406.

³ *Peter v. Compton*, Skin. 353. *Souch v. Strawbridge*, 2 C. B. 808.

⁴ *Dobson v. Collis*, 1 H. and N. 81.

⁵ *Boydell v. Drummond*, 11 East, 154.

⁶ *Donellan v. Read*, 3 B. and Ad. 899. *Cherry v. Heming*, 4 Ex. 631.

apply, because in such case the agreement on which the action is founded is an agreement to pay the price of the work implied from its performance, and not an agreement which is not to be performed within a year.¹

The statute requires the agreement, that is, everything that is agreed to be done by both parties, to be in writing; and no part of the agreement can be proved by parol. If the writing contains only the agreement of one of the parties, it stands as an agreement without consideration, and is of no effect. On this ground, the case of *Sykes v. Dixon*,² already referred to, was decided. Nor can it be shown that the agreement of the parties was different in any respect than as contained in the writing. Thus where there was an agreement between the master and his clerk, that the one should serve the other at a specified annual salary, increasing each year, the clerk was not permitted to show that it was agreed that the salary should be paid quarterly, nor would the Court infer such agreement from the fact that it had been paid quarterly, the written agreement importing that it was to be paid annually.³

The 17th (in Revised Statutes 16th) section of the Statute of Frauds provides that "no contract for the sale of any goods, wares, or merchandise, for the price of £10 sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged

¹ *Souch v. Strawbridge*, 2 C. B. 814, per Tindal, C. J.

² 9 A. and E. 693.

³ *Giraud v. Richmond*, 2 C. B. 835.

by such contract, or their agents thereunto lawfully authorised."

And by 9 Geo. IV. c. 14, s. 7—"The said enactment shall extend to all contracts for the sale of goods of the value of £10 sterling or upwards, notwithstanding they may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

If at the same time some ready-made goods are bought and others are ordered to be made, and the ready-made goods are delivered, the statutes are complied with, and the contract may be enforced.¹

This last statute extends to all contracts for the manufacture of goods of the value of £10 or more, which, when manufactured, are to belong to the party ordering them: such are contracts for the sale of goods to be made.

But contracts for building or repairing houses, or for doing any works upon lands, if they may be performed within a year from the making thereof need not be in writing.

A contract to print a book is considered as a contract for work and materials, and not for the manufacture of goods, and therefore it need not be in writing.²

But a contract to make and fix a set of artificial teeth is a contract for the sale of goods. If the contract is such that when carried out it results in the sale of a chattel, the party cannot sue for work and labour; but if the result of the contract is that the party has done work and labour which ends in nothing that can

¹ Scott v. Eastern Counties Railway, 12 M. and W. 33.

² Clay v. Yates, 1 H. and N. 73.

become the subject of sale, he cannot sue for goods sold.¹

The written memorandum need only state all that is to be done for the party sought to be charged. Nor need it state a mere stipulation as to the mode of payment, such as that it was to be paid by cheque of the defendant's brother.²

23. Some contracts relating to works, if in writing, must be stamped: if unstamped, they are imperfect contracts. The Stamp Act provides generally that, save as therein appointed, no writing on which a stamp duty is imposed shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity, unless it is duly stamped in accordance with the law at the time when it was first executed.³

This is a defect which may be rectified. Agreements or deeds may be stamped at any time upon payment of the duty and a penalty of £10, and if they bear a sufficient stamp when produced in evidence, no inquiry is made as to when the stamp was impressed. If brought to be stamped within three months after their execution, the penalty may be wholly or partially remitted.⁴

The stamp duty, and £10 penalty, and £1 in addition, may be paid to the officer of the court on the production of unstamped instrument on the trial of a cause, and after such payment the instrument may be received in evidence. He is to give a receipt for the duty and penalty, and to account for the money to the Commissioners of Inland Revenue, and they are to stamp the instrument on production of the receipt, denoting it thereon.⁵

Every agreement, or minute, or memorandum of

¹ *Lee v. Griffin*, 1 B. and S. 277.

² *Sarl v. Bourdillon*, 1 C. B. N. S. 188.

agreement, under hand only, whether it is only evidence of a contract, or obligatory upon the parties from its being a written instrument, is subject to a stamp duty of 6d. An agreement or memorandum the matter whereof is not of the value of £5, an agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant, an agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise, an agreement or memorandum made between master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom, are exempt;¹ also an agreement entered into between landlord and tenant pursuant to subsection 6 of section 8, or subsection 2 of section 20 of the Land Law (Ireland) Act, 1881. An agreement for the hire of a fireman and stoker to a steam-vessel is within this exemption.² So is an agreement with an overseer in a printing-office.³ Agreements relating to the sale of goods to be manufactured, which are required by Lord Tenterden's Act to be in writing, are also exempt.⁴

When the contract for works is by deed, it must be stamped as a deed not otherwise charged, the duty on which is 10s.⁵

The Stamp Act of 1891 has consolidated the enactments granting and relating to the stamp duties upon instruments and certain other enactments relating to stamp duties. A contract-note means the note sent by a broker or agent to his principal (except where such principal is acting as broker or agent for a principal) advising him of the sale or purchase of any stock or marketable security.

¹ Sched. tit. Agreement. ² *Wilson v. Zulueta*, 14 Q. B. 405.

³ *Bishop v. Letts*, 1 F. and F. 401.

⁴ 9 Geo. IV. c. 14, s. 8; *Defries v. Littlewood*, 9 Jur. 988.

⁵ 54 & 55 Vict. c. 39, Sched. tit. Deed.

The duty of 6*d.* on an agreement may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the agreement is first executed.¹ He must cancel it by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, so that the stamp may be effectually cancelled and rendered incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamp was affixed at the proper time. A penalty of £10 is imposed on the person required by law to cancel an adhesive stamp who wilfully neglects or refuses to do so.²

The Stamp Law as to agreements under hand is very commonly evaded ; parties, when they enter into agreements, not contemplating the event of a disagreement, and erroneously considering that there is no occasion to stamp an agreement which it may never be necessary to enforce by a resort to legal proceedings. The consequence is, that workmen, when they go to law with their employers, are frequently placed in a difficulty in consequence of a written agreement not being stamped. The penalty to be paid upon stamping being always a burden which it is desirable to avoid, and sometimes exceeding the amount claimed, there are frequent struggles to dispense with the production of written agreements. The rule of law on the subject is, that if from the plaintiff's evidence there appears to be an agreement in writing relating to the claim, it must be produced properly stamped ; no verbal evidence can be given of its contents, or of the agreement of the parties. And even if the claim is for extra works not included in the written contract, the contract must be produced, to ascertain whether the works stated to be extras are so or not. The judge will not look at an un-

stamped contract, to see whether it does or does not apply to the work claimed.¹ But if it is proved that the work sued for was done under a verbal order, distinct from the writing, the written contract need not be produced. In the case where this was ruled, a witness proved that the plaintiffs had been employed to do the inside work of a house under a written contract (which being unstamped could not be given in evidence), and that while the work was proceeding he heard a new order given for an entablature. Lord Tenterden said that it was not imperative on the plaintiffs to produce the contract in writing, but that they might recover for the entablature without doing so.²

24. The consideration of illegal contracts and imperfect contracts will assist us in forming an idea of a perfect contract. A perfect contract is the agreement of two parties that something shall be done by the one for the other. This agreement must be final and intended to be mutually binding. A tender and acceptance usually constitute an agreement,³ and if it is customary to accept the lowest tender, and nothing is said to the contrary when the tenders are opened, the party making lowest tender may consider his tender as accepted. The plaintiff was a builder, the defendants required certain buildings erected, and their surveyor forwarded plans to the plaintiff, amongst others; the plaintiff and others sent in their tenders; the plaintiff's was the lowest. He, the other builders and the surveyor, conceived that, according to the custom, his tender being the lowest was accepted, and partook of

¹ Vincent v. Cole, Moo. and Malk. 257. Jones v. Howell, 4 Dowl. 176. Buxton v. Cornish, 12 M. and W. 426; 1 D. and L. 585. Parton v. Cole, 6 Jur. 370. Edie v. Kingsford, 14 C. B. 759.

² Reid v. Batte, Moo. and Malk. 413.

³ Allen v. Yoxall, 1 C. and K. 315.

the customary refreshment at his expense. The defendants afterwards refused to employ the plaintiff, and denied that the surveyor had any authority to accept the tender. The Judge of the County Court held that there was an acceptance and perfect contract, and his decision was upheld on appeal.¹ But, if the advertisement provides that a written contract shall be signed after the acceptance of the tender, there is no perfect contract until such written contract is drawn out and signed, and either party may withdraw before then.² If the contract is to be made out by an offer on one side and an acceptance on the other, and the answer is equivocal, or anything is left to be done, the two do not constitute a binding contract.³

If a tender refers to a specification, as if an engineer agrees to make an engine in conformity with a specification, it incorporates the whole specification as part of the contract, and the specification stipulating that the engine is to be made and delivered within two months, the engineer is bound to comply with this term.⁴ The claim may be on a particular fund, and not on an individual. When by the rules of a building society the surveyor was to be paid out of the funds of the society, it was held that he had no claim on a member of the society even, for work not within the object of the society, it not appearing that the defendant had so conducted himself as reasonably to create in the plaintiff's mind the belief that he was to pay him.⁵

25. There must be two parties to a contract, the party agreeing and the party agreed with; and there

¹ Pauling v. Pontifex, 20 Law Times, 126.

² Kingston-upon-Hull v. Petch, 10 Ex. 611.

³ Appleby v. Johnson, L. R. 9 C. P. 163.

⁴ Wimshurst v. Daley, 2 C. B. 253.

⁵ Alexander v. Worman, 6 H. and N. 100.

can be but two. However numerous the persons may be who are parties to a contract, they constitute but two parties; one set of persons is bound to do the act agreed to be done, and the other set of persons is the party for whom it is to be done, and who are entitled to exact performance. Where several persons are the party to a contract on one side, the law does not distinguish between the proportion of liability of each of them, but regards each as liable for the entire performance of the contract; and this is the reason why a man cannot contract with a partnership of which he himself is a member, and why, when an agreement is made between two partnerships, and the same person is a member of both firms, it is no legal contract; in these cases one man is a party to the contract on both sides—is agreeing with himself, and is himself bound to perform everything that is agreed to be performed for him. On this ground many actions for services performed by individual members of joint stock companies not incorporated, for the companies, have failed. In reality, these transactions are contracts between the member of the company performing the service and the other members of the company, that they shall remunerate him in proportion to their interest in the company; but as a Court of Law cannot ascertain the amount of the interest of each member in the company, it cannot take cognizance of the contract, and the only remedy of the member who has performed the service is in a Court of Equity.

26. It is often a question as who are the parties to the contract. If B. is employed by A. to do work, and B. employs C. to do the whole or part of the work, and C. does it, there is no contract between C. and A., but A. is liable to pay B., and B. to C.¹ Thus the drawer

¹ Schmalting v. Tomlinson, 6 Taunt. 147.

of a mine who was employed by the collier to assist him, the collier being employed by the agent of the proprietor, had no remedy against the proprietors for his wages, although the agent exercised the power to dismiss either the collier or the drawer.¹ But if the employment is transferred from B. to C., with the consent of A., the contract between A. and B. is at end, and there is a new contract between A. and C.² A person who becomes partner with the employer after the contract, and during the progress of the work, does not become liable as co-contractor, although he may give directions as to the work.³ It is the usage of architects to have their quantities taken out by surveyors, and for the successful contractor to add the amount of the surveyor's charge to his contract. If the party proposing to build refuses to employ any builder, he is liable to the surveyor employed by his architect, it being considered that the architect has authority from him to employ the surveyor in the event of there being no contract with the builder.⁴

In a subsequent action founded on this custom, the questions left to the jury were, Was there such a custom? was it known to the parties? and did they contract on the footing of it? The verdict was for the plaintiffs.⁵ When a contract to build is entered into, the surveyor taking out the quantities is the agent for the builder. The building-owner is not responsible to the builder for the negligence of the surveyor in taking out the quantities.⁶

[See now Partnership Act, 1890 (53 & 54 Vic. c. 39), in Appendix.]

¹ Exp. Eckersley, 17 Jur. 198.

² Oldfield v. Lowe, 9 B. and C. 73. Browning v. Stallard, 5 Taunt. 450.

³ Beall v. Moulds, 10 Q. B. 976.

⁴ Moon v. Witney Union, 3 Bing. N. C. 814. (1837.)

⁵ Lansdowne v. Somerville, 3 F. and F. 226. (1862.)

27. A perfect contract, when made, is in the nature of a private law, and binds the parties according to their intention in the same manner as a public law binds all persons who are subject to the legislator according to the intention of the legislator. The intention which prevails in the construction of contracts is not the private intention of the individual parties, but the intention to be collected from their expressions to each other, and which each must have understood the other to entertain. In making a contract, parties may have very dissimilar views and intentions, but they mutually profess to intend the same thing, and that which they so mutually profess is the thing. It is very improbable that a person would agree to anything that is unjust, unequal, unreasonable, or oppressive to himself; and therefore the words of a contract are to have a just and reasonable construction, and are to be understood in that sense which will make their operation equal and fair to both parties.

28. In some cases just and reasonable provisions are implied from the nature of the contract, or the terms used. For instance: if the agreement is that the workman shall do work skilfully, and that the employer shall pay, and the work is done unskilfully,—the employer says, “I did not agree to pay if the work was done unskilfully, and therefore you agreed to work for nothing in that event;”—the workman says, “That in the event which has happened, the agreement was that what is just should be done; and it is just that I should receive something for my work, though not done quite so skilfully as agreed:”—the law, interpreting the contract as equal to both parties, adopts the view of the workman. A contract of this nature is usually termed an implied contract, and is distinguished from the contract inferred from the ordinary meaning of the

words used, which is termed an express contract. An express contract and an implied contract, however, differ but in degree, the one being expressed more clearly, and the other more obscurely, by the words used.

Those provisions are implied which are necessary to make the contract effectual. Thus, a contract by a servant to serve implies a contract by a master to employ. When the words of an instrument show that its efficiency is to depend on an act to be done by one party, a contract by him is implied that he will do all in his power to bring about that act, and that if it has not been done it shall be done. A contractor agreed to execute certain paving works for a local board, to be paid out of the money when collected from the owners of the property chargeable. A contract by the board to take the steps to make the owners liable was implied.¹ And where the contract was to fix machinery to buildings of the defendant, a condition was implied that he would provide and keep up the buildings, and they having been destroyed before the work was finished, the plaintiff was held entitled to recover for what he had done.² There is no implied warranty that works can be executed in the manner described in the plans and specifications.³ In cases of a personal service it is an implied condition that the servant shall continue able to serve, and if he dies or becomes unable to serve without fault on his part, the contract is dissolved.⁴

29. Another rule peculiar to written contracts may here be shortly noticed. When men reduce their con-

¹ *Worthington v. Sudlow*, 2 B. and S. 508.

² *Appleby v. Meyers*, L. R. 1 C. P. 615.

³ *Thorn v. Mayor of London*, L. R. 9 Ex. 163.

⁴ *Taylor v. Caldwell*, 3 B. and S. 835. *Boast v. Firth*, L. R. 4 C. P. 1. *Robinson v. Davison*, L. R. 6 Ex. 269.

tracts to writing, they do it for the sake of certainty. The certainty sought for is not always attained. Words but imperfectly describe things: whether they profess to express the meaning of one man, as in a will, or of two men, as in a contract, or of a body of men, as in a statute, there are more disputes about their interpretation than about anything else. All conversations before or at the time of making the written agreement, and not incorporated in it, are excluded. An omission in a written agreement cannot be supplied, nor a patent ambiguity removed, by oral evidence. In a building contract penalties were imposed for delay, but the time for completing the building was left blank. Evidence that each of the parties was told verbally the day for the completion of the building was rejected, and the penal clause being dependent on this fell to the ground.¹ Parol evidence is admissible to explain a written contract, though not to add to it. Thus a contract for the engagement of a servant is evidence that at the time of the contract he was a lace-buyer was admitted to show that he was engaged in that capacity.² But where the engagement was at a weekly salary, parol evidence that the engagement was for a year was rejected.³ A custom of trade also is admissible to annex incidents to or interpret a written contract in a matter as to which it is silent, if not inconsistent with its terms; as where a building contract required the builder to send in weekly accounts of work, he was allowed to prove that the expression had a peculiar signification in the building trade, and did not mean an account of all the work done, but only of the day-work estimated in each week, on the additions and alterations, and the materials used in such day-work.⁴

¹ *Kemp v. Rose*, 1 Giff. 258. ² *Price v. Mouat*, 11 C. B. N. S. 508.

³ *Evans v. Roe*, L. R. 7 C. P. 138. ⁴ *Myers v. Sarl*, 3 E. and E. 306.

A contract was to build the walls of a house for three shillings per superficial yard of work nine inches thick. The walls were partly stone-work of two feet thick, and partly brick, and the usage was to reduce brick-work for the purpose of measurement to nine inches, but not stone-work, unless exceeding two feet in thickness. Held that the price fixed only applied to the brick-work, and that the stone-work was to be paid for on a *quantum meruit*.¹

It has been attempted without success to control an agreement between committees of master printers and compositors as to the amount of wages by the decision of arbitrators appointed in pursuance of rules agreed to by the committees in a particular dispute between one master and his workmen. The award was held to be binding between the then litigant parties, but to have no further force or effect.²

30. In treating of the contract to perform works, the method proposed is, to state the general duties of each party separately. In such a contract one party, termed the contractor, agrees to perform certain works, and the other, termed the employer, agrees to pay a certain reward. The duties of the contractor are, first, to finish the work; secondly, to use care and skill in the performance; thirdly, to do it within a proper time; fourthly, to comply with the particular stipulations in the contract as to the manner of performance. The duties of the employer are, first, to pay; secondly, not to prevent but to assist the contractor in his execution of the contract.

The first duty of a contractor is to complete his contract, that is, to finish all the work he has agreed to do. If he contracts to do a specific work for a specific sum,

¹ *Symonds v. Lloyd*, 6 C. B. N. S. 691.

² *Hill v. Levey*, 3 H. and N. 7, 702.

he must perform the whole of the work before he is entitled to receive payment of any part of the price : so long as the work is unfinished, he is entitled to nothing.¹ The plaintiff agreed to repair three chandeliers and make them complete for £10: he returned them to the defendant, having cleaned them and repaired some icicles and drops, but not in a perfect state: the jury found that the contract had not been performed, but that the defendant had derived benefit from the work to the amount of £5. The plaintiff was nonsuited, and the Court refused to set aside the nonsuit, because he had not performed his contract. It was urged that the defendant had not returned the icicles and drops which the plaintiff had added to the chandeliers; to which it was answered, that the plaintiff ought to have demanded them.² In an action for work done in curing a flock consisting of 497 sheep, of the scab, it was proved that the plaintiff had declared that he did not expect to be paid unless he cured them all, and that forty out of the flock were not cured. This being evidence of a contract to cure the whole for one sum, the plaintiff failed to recover.³

So where the contract was to build a mill for a specified sum, and if it did not answer, to build another, the Court decided that the plaintiff could recover nothing for building the mill, unless he either proved that it had answered or had been accepted by the defendant.⁴

And where the action was on a contract to build a house for a certain sum, which the plaintiff did not complete because the defendant had refused to supply him with money as he went on, Coleridge, J., ruled that he was not entitled to receive anything under the contract until he had finished the house; and he failed

¹ Pontifex v. Wilkinson, 1 C. B. 75, 2 C. B. 349.

² Sinclair v. Bowles, 9 B. and C. 92.

³ Bates v. Hudson, 6 D. and R. 3. ⁴ Davis v. Nichols, 2 Chit. 320.

to recover anything for the work done under the contract, although he recovered for extra works.¹

The same law prevailed in a case on a contract for building a house for a certain sum, in which it appeared that the builder had omitted to put in the house certain joists and other materials of the given description and measurement. Mansfield, C. J., nonsuited the plaintiff, being of opinion, that not having performed his agreement, he could not recover upon that, and that he could not recover the value of his work. He observed, "The defendant agrees to have a building of such and such dimensions: is he to have his ground covered with buildings which he would be glad to see removed, and is he to be forced to pay for them besides? It is said he has the benefit of the houses, and therefore the plaintiff is entitled to recover on a *quantum valebant*. To be sure it is hard that he should build houses and not be paid for them; but the difficulty is to know where to draw the line; for if the defendant is to be obliged to pay in a case where there is one deviation from his contract, he may equally be obliged to pay for anything how far soever distant from what the contract stipulated for."²

In this case the work was done in a manner different from that specified in the contract, and was not left unfinished. It is an authority for the position, that a clear and positive deviation from the contract has the same effect as an omission to finish the work contracted for.

When payment is to be made by instalments, according to the quantity of work done, the workman must perform all the work agreed to be done to entitle him to an instalment before he can claim any payment: if he stops before an instalment is earned, he is entitled

¹ Rees v. Lines, 8 C. and P. 126. ² Ellis v. Hamlen, 3 Taunt. 52.

to nothing. An attorney covenanted with his clerk to allow him 2s. for every quire of paper that he should copy out:—the clerk copied four quires and three sheets. It was held by the Court of King's Bench, on error from the Common Pleas, that there could be no apportionment, for the covenant was to allow him 2s. for copying a quire, and not *pro rata*; and the judgment of the Common Pleas, which was for 8s. 3d., was reversed.¹

The death of the workman after an instalment is payable, and before the work is complete, does not affect the right to such instalment, though the employment may involve personal confidence and is put an end to by the death. Thus, when the consulting-engineer to a railway, who was to complete the construction of the line in fifteen months, and be paid £500 by five quarterly instalments, died after the third and before the fourth quarterly instalment became payable, it was decided that his administrator was entitled to recover the unpaid instalments, including the third, although it was contended that the contract was to pay him a certain sum for certain work, and being dissolved by his death, his representative could only recover the value of the work actually done; the Lord Chief Baron saying, "His death no doubt dissolved the contract; but did not divest the right of action which had already accrued."²

31. But if there is no contract to do a specified quantity of work for a specified sum, the workman who works on property in the possession of his employer is entitled to be paid for his work as he proceeds; at all events, if the custom of his trade authorises such payment. A shipwright undertook to put a vessel into thorough repair; in consequence of a dispute between

¹ Needler v. Guest, Aleyn, 9.

² Stubbs v. Holywell Railway Company, L. R. 2 Ex. 311.

him and the ship-owner, he stopped work and demanded payment for what he had done, whilst the vessel was still unfinished. He sued for and recovered the value of his work actually done to the vessel. Lord Tenterden said,—“There is nothing in the present case amounting to a contract to do the whole repairs and make no demand until they are completed;” Littledale, J., and Parke, J., observing that the contract was to employ the plaintiff in the same way as shipwrights were ordinarily employed.¹

32. If by the contract the work is to be finished before payment, the risk of all accidents which prevent the completion of the work is upon the workman. A printer was employed to print a book: when the work was nearly complete a fire accidentally broke out on his premises, by which the whole impression was destroyed. It was proved, that by the custom of the trade, a printer was not entitled to be paid for any part of his work until the whole was completed and delivered. The Court held that the custom was the law of the trade, and so far as it extended, controlled the general law, and therefore disallowed the printer's claim.² In another printer's case, the plaintiffs had been employed to print 750 copies of a work: they had printed and delivered to the defendant 210 copies of the work, when a fire broke out in their premises and destroyed all the remainder. They failed to recover anything for the printing, because the jury were not satisfied that the remaining 540 copies were all printed, completed, and ready for delivery before the fire. The defendant's counsel contended that he ought to have had notice of the work having been completed, and to take it away.

¹ Roberts v. Havelock, 3 B. and Ad. 404. See also Withers v. Reynolds, 2 B. and Ad. 882. Zulueta v. Miller, 2 C. B. 895.

² Gillett v. Mawman, 1 Taunt. 137.

This does not appear to have been adverted to by the Judge in his summing up; but according to the custom, as stated in *Gillett v. Mawman*, was necessary.¹

But if there is no contract or custom that the work shall be completed before payment, the workman is entitled to be paid for what he has done, in the event of the work being destroyed by accidental fire. Thus, in the case of a shipwright who was employed to repair a ship, which was burnt in the dock before the repairs were finished, and who sued for the work he had done, Lord Mansfield said, "This is a desperate case for the defendant. Though compassionate, I doubt it is very difficult for him to maintain his point. Besides, it is stated that he paid £5 for the use of the dock." Mr. Justice Wilmot: "So it is like a horse, which a farrier was curing, being burnt in the owner's own stable."²

33. On a contract for the manufacture of goods, the property in the thing ordered, during the progress of the manufacture and when made, is in the manufacturer, and remains in him until he has delivered it to his employer, and his employer has accepted it, or until both parties have agreed to the thing being appropriated to the employer. This is the general legal inference from the contract to make goods; but the parties may agree that the property in the thing shall pass to the employer during the progress of the work.

Until the property has passed to the employer, the manufacturer has no right to the price, although he may maintain an action against his employer for not accepting the thing made. The loss, in case of accidental destruction by fire or otherwise, is the loss of

¹ *Adlard v. Booth*, 7 C. and P. 108. *Clay v. Yates*, 1 H. and N. 73.

² *Menetone v. Athawes*, 3 Bur. 1592. See *Appleby v. Myers*, L. R. 1 C. P. 623, ante, p. 59.

the manufacturer; and in the event of his bankruptcy, the right to the thing passes to his assignees.

Royland, a barge-builder, agreed to build a barge for Pocock. Whilst the barge was in progress, Pocock advanced him money to the whole value of the barge, and he painted Pocock's name on the stern before it was completed, and afterwards, but before the completion of the work, became bankrupt. The Common Pleas held that the barge belonged to the assignees of Royland, and not to Pocock; Mansfield, C. J., saying that the only effect of the payment was, that the bankrupt was under a contract to finish the barge. Heath, J., appeared to think that the contract might have been performed by the delivery of any other barge within the proper time, and said that the painting the name on the stern made no difference; and Lawrence, J., said no property vests till the thing is finished and delivered.¹

In *Atkinson v. Bell*,² the plaintiffs, as assignees of Heddon, sought to recover of the defendants the price of some patent spinning-machines which had been made by the bankrupt for them, but which they had refused to accept: they claimed the price as a debt either for goods sold or for work done. The defendants' agent had seen the machines while being made, and knew that the bankrupt intended them for the defendants. It was held that the plaintiffs could not recover the price of the machines as a debt, though they might recover damages against the defendants for their refusal to accept them. Bailey, J., said,—"When goods are ordered to be made, while they are in progress the materials belong to the maker. The property does not vest in the party who gives the order until the thing ordered is completed;

¹ *Mucklow v. Mangles*, 1 Taunt. 318.

² 8 B. and C. 277.

and although while the goods are in progress, the maker may intend them for the party ordering, he may afterwards deliver them to another, and thereby vest the property in that other. They were Heddon's goods, although intended for the defendants, and he had written to tell them so. If they had expressed their assent, there would have been a complete appropriation vesting the property in them. Then, as to the count for work and labour, if you employ a man to build a house on your land, or to make a chattel with your materials, the party who does the work has no power to appropriate the produce of his labour and your materials to any other person. Having bestowed his labour at your request on your materials, he may maintain an action against you for work and labour; but if you employ another to work up his own materials in making a chattel, then he may appropriate the produce of that labour and those materials to any other person. No right to maintain any action vests in him during the progress of the work; but when the chattel has assumed the character bargained for, and the employer accepted it, the party employed may maintain an action for goods sold and delivered; or, if the employer refuses to accept, a special action for such refusal. But he cannot maintain an action for work and labour, because his labour was bestowed on his own materials, and for himself, and not for the person who employed him." ¹

In *Laidler v. Burlinson*,² Laidler had entered into a contract for building a ship, which specified the dimensions, &c., and the price; and the plaintiff agreed to take one-fourth, the Tees Coal Company one-fourth,

¹ *Grafton v. Armitage*, 2 C. B. 336. *Clay v. Yates*, 1 H. and N 73. *Lee v. Griffin*, 1 B. and S. 272.

² 2 M. and W. 602.

and other persons the remainder. Laidler commenced building the ship, and the defendant paid him the whole amount of his fourth : and Harris, a member of the Tees Coal Company, inspected the work, and occasionally found fault with it, and it was improved in consequence. Before the ship was finished, Laidler became bankrupt, and at the time of his bankruptcy the ship in question was the only one in Laidler's yard. The Court held that the contract was a contract to purchase the ship when finished, and not until then, and therefore that the property was in Laidler at the time of his bankruptcy.

34. But when, after the article is completed, each party has manifested his consent that it shall be the property of the employer, he is entitled to it. In *Carruthers v. Payne*,¹ the plaintiff had ordered Thompson to build a chariot for him, which was completed according to order and paid for. After it was completed, the plaintiff ordered a front seat to be added, but the coach-builder being slow in the execution of this latter order, the plaintiff sent for it several times, and Thompson promised to send it. The plaintiff afterwards ordered it to be sold as it then was ; and whilst it was in Thompson's possession for sale, he became bankrupt. The Court held that the chariot belonged to the plaintiff, and not to Thompson's assignee, and distinguished the case from *Mucklow and Mangles*, because both the builder and the purchaser had treated the chariot as finished.

In *Elliott v. Pybus*,² the defendant had ordered a ruling-machine of the plaintiff, without any agreement as to price, and paid money on account. When finished, the plaintiff requested him to fetch it away, and pay the balance of the price. The defendant saw it com-

¹ 5 Bing. 270.

² 10 Bing. 512.

plete, admitted it was made to order, and requested the maker to send it home without payment: he first objected to the price as exorbitant, but afterwards said he would endeavour to arrange it. He was considered as having accepted the machine, and therefore to be liable for the price as a debt in an action for goods bargained and sold: both parties had agreed that the machine was the thing ordered by and made for the defendant, and that the price was proper.

In *Wilkins v. Bromhead*,¹ the plaintiff had ordered a greenhouse of Smith and Bryant for £50; when finished, Smith and Bryant gave the plaintiff notice, and requested him to remit the price, which he did, and desired them to keep the greenhouse till sent for. Before the plaintiff sent for his greenhouse, Smith and Bryant became bankrupts, and their assignees claimed it. The Court held that the property had passed to the plaintiff, because there had been an appropriation on one side, and an assent to that appropriation on the other.

On these cases it will be observed, that in order to vest the property in a chattel made under a contract in the employer, there should be an agreement between the workman and employer after the chattel is made, that it is the thing made in pursuance of the contract, and as to the terms upon which it is to be delivered. The payment of the price is not essential, if the parties are agreed as to the price to be paid. In such case the thing belongs to the employer, and the workman has a lien upon it for the price. The delivery of the thing is not essential, if the parties are agreed as to the thing to be delivered.

35. The parties may agree that the property in the chattel to be made shall be vested in the employer

¹ 6 M. and G. 963.

during the progress of the manufacture. Contracts of this nature are frequently made for building ships.

In an action of trover by the assignees of Paton, a bankrupt, it appeared that Paton, who was a ship-builder, had entered into a contract with Russell to build and complete a ship for him, and finish and launch her in April, 1819. Russell was to pay for her by four instalments of £750 each, by bills: the first, when the keel was laid; the second, when they were at the light plank; the third and fourth, when she was launched. Russell duly paid the first and second instalments, and in March, 1819, appointed a master, who superintended the building. Before the ship was finished, it was registered in Russell's name, and Paton signed the certificate of her build for the purpose of registration: the third instalment was paid at that time. Before the ship was launched, Paton became bankrupt, and Russell took possession of her and had her launched, without paying the last instalment. The Court of King's Bench held that the property of the ship was vested in Russell. Abbott, C. J., in delivering the judgment of the Court, said, "The payment of these instalments appears to us to appropriate specifically to the defendant the very ship so in progress, and to vest in the defendant a property in that ship; and that as between him and the builder, he is entitled to the completion of that very ship, and that the builder is not entitled to require him to accept any other. But this case does not depend merely upon the payment of the instalments, so that we are not called upon to decide how far that payment vests the property in the defendant, because here Paton signed the certificate to enable the defendant to have the ship registered in his (the defendant's) name, and by that act consented that the general property in the ship should

be considered from that time as being in the defendant." They also held that the defendant was entitled to a rudder and cordage which had been bought by Paton specifically for the ship, though they were not actually attached to it at the time of his bankruptcy: but they decided that the assignees had a lien on the ship for the amount of the fourth instalment, for which Russell had not given bills at the time when he took possession, and were entitled to recover the amount of that instalment.¹

In another case the contract for building a ship provided that it should be built under the superintendence of a person appointed by the employer, and fixed the payment of the price by instalments, regulated by particular stages in the progress of the work. The Court of Queen's Bench held, that as by the contract the vessel was to be built under a superintendent appointed by the purchaser, the builder could not compel the purchaser to accept of any vessel not constructed of materials approved by the superintendent, and the purchaser could not refuse any vessel which had been so approved: and that as soon as any materials had been approved by the superintendent, and used in the work, the fabric consisting of such materials was appropriated to the purchaser. As soon as the last of the necessary materials was approved and added to the fabric, the appropriation was complete, and the general property of the vessel vested in the purchaser, because nothing remained to be done prior to the delivery. But until the last of the necessary materials was added, the vessel was not complete; the thing contracted for was not in existence, for the contract was for a complete vessel, and not for parts of a vessel: but they seem to have thought that the mere fact of the ship being built with the approbation of a superintendent did not vest

¹ Woods v. Russell, 5 B. and Ald. 942.

any property in the purchaser until it was completed. They decided, but with hesitation, upon the authority of *Woods v. Russell*, that the provision for payment regulated by particular stages of the work was made in the contract with the view to give the purchaser the security of certain portions of the work for the money he was to pay, and was equivalent to an express provision, that on payment of the first instalment the general property of so much of the vessel as was then constructed should vest in the purchaser; and that upon such payment, the rights of the parties were the same as if so much of the vessel as was then constructed had originally belonged to the purchaser, and had been delivered by him to the builder to be added to and finished, and every plank and article subsequently added became the property of the purchaser as general owner.¹

A shipbuilder contracted to build a screw steamer for £16,000, to be paid by instalments: the four first of £1000 at specified times; £3000 on a day named, provided the vessel was plated and her decks laid; £3000 on a day named, provided she was then ready for trial; £3000 on a day named, provided she was according to contract, and properly completed; and £3000 after completion. The building was carried on under the superintendence of the employer's agent, the employer's name was punched on the keel, the instalments were paid in advance, but the building was stopped before she was decked or plated. The ship was considered as belonging to the employer, principally from the circumstance of its being built under the superintendence of the employer's agent, coupled with the payment of the instalment.²

¹ *Clarke v. Spence*, 4 Ad. and El. 448.

² *Wood v. Bell*, 5 E. and B. 772; 6 E. and B. 355.

Whilst a ship was building, and after the employer had made advances, the builder executed a bill of sale reciting the advances, and witnessing that for the security and repayment of the advances he bargained, sold, assigned, and transferred the ship then in progress, to have and to hold the said ship when it should be completed and finished. This was decided to vest the property in the employer, the intention being apparent to give him a present security on the unfinished ship.¹

Directly the parties have agreed that the thing in progress of making shall become the property of the employer, their agreement takes effect according to their intentions;² and this agreement may either be expressly made in the contract of employment, or may be inferred from the provisions of the contract, as from a provision for payment of the price of the work during its progress; or the parties may agree subsequently to the original contract, as they did in *Woods v. Russell*, where the signature to the certificate of registry was relied upon as evidence of an agreement by both parties that the ship then unfinished should become the property of the employer.

36. In the instance of contracts for building or repairing houses, the work is not complete, and the things made for such work do not become the property of the employer, until they are actually fixed on the land, or to the house, so as to become part of it.

A builder contracted to build an hotel, and the contract provided, that in the event of his bankruptcy, his employers should take possession of *work already done* by him, and put an end to the agreement, and pay the value of the work actually done and fixed. The

¹ *Reid v. Fairbanks*, 13 C. B. 692.

² *Young v. Matthews*, L. R. 2 C. P. 127.

builder became bankrupt during the progress of the work. Before his bankruptcy, he delivered on the premises of his employers some wooden sash-frames, which he intended for the hotel: they were approved by the clerk of the works, and returned to him to have some iron pulleys belonging to his employers fixed to them; and the frames with the pulleys were in the builder's shop at the time of his bankruptcy. The sash-frames were decided to belong to the builder's assignees, and not to the proprietors of the hotel, because the contract was not to make goods as movable chattels, but to make and fix them to the hotel.¹ It results from this case, that if a man is employed to make a window for a house, he has not finished his contract, and can claim nothing, until he has fixed the window in the house: if it is destroyed, or lost, before it is fixed, the loss is his, and he must replace it. An agreement may be so worded as to give the employer a lien on the materials before they are used in the work,² or entitle him to use them in the completion of the work.³ If materials are appropriated to the work by the workmen, with the consent of the employer, they become the property of the employer. That such an appropriation has taken place may be inferred as a conclusion of fact by a jury from circumstances.⁴ A building contract provided that all materials brought upon the premises for the purpose of erecting buildings should be considered as immediately attached to and belonging to the premises, and should not be removed without the employer's consent. This

¹ *Tripp v. Armitage*, 4 M. and W. 687.

² *Hawthorn v. Newcastle-upon-Tyne and North Shields Railway Company*, 3 Q. B. 734, *n*.

³ *Baker v. Gray*, 17 C. B. 462.

⁴ *Goss v. Quinton*, 3 M. and G. 841. *Williams v. Fitzmaurice*, 3 H. and N. 844.

was held to give the employer a right to the materials, and protect them against an execution against the builder.¹ The builder has also an interest in them, for the purpose of using them in the building, and they cannot be seized under an execution against the employer.²

37. If the work is done on a chattel delivered by the employer to the workman, the contract, generally speaking, is completed, so as to entitle the workman to be paid directly the work is finished, and the employer has had notice of that fact, and a reasonable opportunity of inspecting the work, and ascertaining that it is according to order. He is bound to deliver his work, when done, upon request and upon payment of the price, but does not forfeit his right to be paid by refusing to deliver it.

A surveyor was employed to make a map and survey of a parish, the field-books and paper being provided by the employers. He finished his work, but refused to deliver the map and reference-books, except upon payment of a sum which the defendants considered excessive. They had an opportunity of inspecting the map and books. He brought an action for his demand, and the jury found that the value of his work was much less than he claimed. The Court gave judgment in his favour for the amount found by the jury. Parke, B., said, "The true state of the contract appears to me to be this: the defendants employ the plaintiff to survey a parish, and then to put down the results of his survey, first on books provided for him by the defendants, and afterwards on paper to be provided by them for him, in the shape of a map or plan; and incidental to that employment, it may be a condition that

¹ *Brown v. Bateman*, L. R. 2 C. P. 272.

² *Beeston v. Marriott*, 4 Giff. 436, 9 Jur. N. S. 960.

the plaintiff should give the defendants a reasonable opportunity of comparing the maps with the books, and both of them with the lands surveyed, in order to ascertain their accuracy. It is said that it is part of the same contract, that the plaintiff should be ready and willing to deliver the books and map to the defendants; but I do not think that is any part of the contract, although there may be an independent contract that the plaintiff should return the materials supplied by them on request, as in the case of delivery of goods to a warehouseman to keep, or, which is perhaps a closer analogy, of cloth to a tailor, to be wrought into a coat; but that is altogether collateral to the right of the tailor to sue for the debt due to him: as soon as he has worked the cloth, and given his employer an opportunity of ascertaining whether it is made to fit, he has a right to send in his bill for the work.”¹

38. Although the delivery of the thing worked on is not a condition to the right of the workman to sue for the price of his labour, he is bound to deliver it whenever his employer requests him to do so, and pays or tenders the amount due to him for his work actually done, and this although he has not finished the work contracted for, and the demand by the employer of the thing may be a breach of contract on his part. The property in the chattel is still in the employer, notwithstanding its delivery to the workman to be wrought. He has no right to keep it until the work is completed against the owner's wish, but is sufficiently recompensed by an action against the employer for the profit he would have made, had he been permitted to complete his contract.²

The workman is responsible to his employer if by

¹ Hughes v. Lenny, 5 M. and W. 183.

² Lilly v. Barnsley, 1 Car. and Kir. 344.

mistake he delivers the chattel to a wrong person. A watchmaker was employed to repair a watch ; when it was repaired, he tendered it to the owner, who told him to take it to his uncle in Margaret Street, who would pay him : not finding this uncle at home, he delivered the watch to another uncle of the owner, who lost it. The watchmaker was held liable to an action for a breach of contract in not delivering the watch to the plaintiff.¹

39. The contractor is also bound to exercise ordinary care and skill in the performance of the work, to perform it in the specified manner, and with the specified materials, if the description of materials are specified : if not, he is bound to use materials which are reasonably fit and proper for the purpose of the work.

The cases in which the degree of care and skill to be exercised in the performance of works has been discussed, are those of surgeons and other professional men ; but the law established by them is applicable to every person who contracts to perform work of any description. It has been decided in the case of a surgeon, that he is bound to know and to act according to the ordinary rules and usage of his profession ;² that he is responsible for unskilful treatment, as well as for carelessness.³ Tindal, C. J., has thus defined the degree of skill required of a professional man : " Every person who enters into a learned profession undertakes to bring to it the exercise of a reasonable degree of care and skill. He does not undertake, if he is an attorney, that at all events you shall win your cause ; nor does a surgeon undertake that he will perform a cure, nor does he undertake to use the highest possible degree of skill. There may be persons who have higher educa-

¹ *Wilson v. Powis*, 3 Bing. 633.

² *Slater v. Baker*, 2 Wils. 359.

³ *Seare v. Prentice*, 8 East, 348.

tion and greater advantages than he has, but he undertakes to bring a fair, reasonable, and competent degree of skill.”¹ A person who holds himself out and accepts employment as a surveyor of ecclesiastical dilapidations, though not bound to supply minute and accurate knowledge of the law, ought to know the general rules applicable to the valuation of ecclesiastical property, and the broad distinction which exists between the case of a landlord and tenant and that of an incoming and outgoing incumbent. On this ground the valuers were held responsible to their employer, the incoming incumbent, for negligence, because, in ignorance of the decision of *Wise v. Metcalfe*, they valued the dilapidations to the extent only of rendering the premises habitable, and not with a view of their being put in good and substantial repair.² And a parliamentary agent is bound to know and act upon the standing orders of the Lords and Commons, but he is not responsible if in a doubtful case an application to Parliament fails, because he has put a construction upon an order different from that which afterwards prevails.³ A house-agent must use reasonable care and diligence in ascertaining the condition of a person before he introduces him to the landlord as a tenant.⁴ A workman employed to fix and fit up a kitchen range, if it cannot be done in a workmanlike manner, is bound to tell his employer so before beginning the work, and to give him the benefit of any knowledge which a competent workman ought to have, and which the employer may not

¹ *Lauphiere v. Phipos*, 8 C. and P. 479. *Rich v. Pierpont*, 3 F. and F. 35.

² *Jenkins v. Betham*, 15 C. B. 168. *Turner v. Goulden*, L. R. 9 C. P. 57.

³ *Bulmer v. Gilman*, 4 M. and G. 108.

⁴ *Hays v. Tindall*, 1 B. and S. 296.

have.¹ From these authorities may be learnt the degree of care and skill which every workman is bound to bring to the execution of his task. He must exercise that degree of care which a man of ordinary prudence would exert in the conduct of his own affairs; and he must possess and use that degree of knowledge of his art, and skill in the practice of it, which a workman of average knowledge and skill in the same trade possesses. Whether or not he has been deficient in these respects is a question of fact, to be determined, in case of dispute, by a jury. He is not, without orders, to try experiments, or to perform his work in other than the ordinary way; if he does, and damage ensues to his employer, he is answerable.²

40. If a chattel is delivered to the workman to be worked on, or to be used as materials for his work, he must take the same care to preserve it from injury, and to prevent its loss, as a man of ordinary prudence would take of his own property. Although he makes no charge for keeping the goods, he is not a gratuitous bailee, who is only liable for gross negligence. The pay he is to receive for his work extends to the taking care of the goods, and renders him a bailee for reward and liable for to take ordinary care of them.³ A ship was delivered to a shipwright to be repaired, and placed by him in his dry dock. Whilst she lay there, during a remarkably high tide, the dock-gates were burst open by the water, and she was forced against another vessel and injured. The accident happened in the daytime, and all the shipwright's men were absent. In an action against him for the injury done to the ship, Lord Ellenborough held that it was the duty of the defendant to have had a sufficient

¹ *Pearce v. Tucker*, 3 F. and F. 136. ² *Slater v. Baker*, 2 Wils. 359.

³ *White v. Humphrey*, 11 Q. B. 43.

number of men in the dock to take measures of precaution when the danger was approaching, and that he was clearly answerable for the effects of that deficiency.¹

A chronometer was delivered to a watchmaker to be cleaned and repaired. He had a servant, eighteen years of age, who had been well recommended to him, and who slept in the shop at night for the purpose of protecting the property there. This servant, one night, stole the chronometer and other articles, some belonging to the watchmaker and some to his customers, which at the time of the theft were locked up in a drawer in the shop. He had an iron chest in his shop, in which watches belonging to himself, of great value, were locked up, and which was not and could not easily have been broken open. Several watchmakers proved that it was their invariable habit to lock up at night, in an iron safe, or some other place of equal security, all watches, whether belonging to themselves or in their custody for the purpose of being repaired. Dallas, C. J., was of opinion that the defendant was bound to protect the property against depredations from those who were within the house. He had taken care of his own property by locking up and securing it. The servant had been improperly trusted, and the defendant was guilty of gross negligence in leaving him in the care of the goods.² But if ordinary care is taken of the goods, the workman is not responsible in case of their being stolen, though they are stolen by his own servants.³

¹ Leek v. Mestaer, 1 Campb. 138.

² Clarke v. Earnshaw, Gow. 30. Re United Service Company, L. R., 6 Ch. 212.

³ Finucane v. Smith, 1 Esp. 315. Vere v. Smith, Vent. 121, 2 Lev. 5, Co. Lit. 89 a. Coggs v. Bernard, 2 Ld. Ray. 916, 7. Giblin v. McMullen, L. R., 2 P. C. 317.

41. The duty of the workman to use care and skill has reference to the contract with, and orders of, his employer. If the employer looks after his own property, and does not trust the workman with it, the workman is not bound to take care of it. So if he exercises his own judgment, and gives orders which are ignorant and unskilful, he cannot complain if the workman executes them. In a case in which a man went into a surgeon's shop and requested to be bled, saying that he had been relieved by that means before, and the surgeon's apprentice bled him,—Tindal, C. J., ruled that he could not complain of the surgeon, on the ground that it was improper to bleed him, because he did not consult him as to the propriety of being bled; he took that upon himself, and only required the manual operation to be performed. He was therefore bound to show want of skill in that.¹ The same principle was adverted to by Bayley, J., in an action for work done in erecting a stove in a shop, and laying a tube under the floor for the purpose of carrying off the smoke, which entirely failed. He said that if the employer had chosen to supersede the workman's judgment by using his own, he was bound to pay his bill.²

42. There is a distinction between the case of work being left unfinished, and of its being done improperly. It is not a condition to payment that the work shall be done in a proper and workmanlike manner; if it were so, a little deficiency of any sort would put an end to the contract and deprive a workman of any claim for payment. But under such circumstances, it has always been held that, where the contract has been executed, a jury may say what the workman really deserves to have.³

¹ Hanneke v. Hooper, 7 C. and P. 81.

² Duncan v. Blundell, 3 Stark. 6.

³ Per Tindal, C. J., Lucas v. Godwin, 3 Bing. N. C. 743.

It was at one time decided, that if the work was finished, no matter how unskilfully or improperly, the workman was entitled to the contract price, and the employer's only remedy was by cross action for the negligence, on the ground that on the completion of the work the event had happened upon which payment was to be made, and that the exercise of care and skill in the performance was not a condition precedent to the agreement to pay. Thus, in an action for the price of erecting a booth on the Bath race-ground, the plaintiff proved that the measure of the booth was settled between him and the defendant, and that he was to have twenty guineas for building it, five of which had been paid, and that he did build it of the stipulated dimensions. The defendant proved that the booth fell down during the middle of the races, owing to bad materials and bad workmanship, and that the plaintiff was fully aware of both. Buller, J., held that there was no defence to the action, especially as a particular sum was specified; but that the defendant might bring a cross action against the plaintiff for building the booth improperly.¹

This rule was found to operate so unjustly,—an unskilful workman being usually a bad paymaster,—that it was soon altered; and it is now settled that when the work is not performed in all respects according to the contract and duties of the workman, he is not entitled to recover the contract price; but that a deduction should be made from the contract price, equal to the difference between the value of the work as it would have been, had the contract been performed, and that of the work actually done.

This appears first to have been decided in the case of *Basten v. Butter*,² which was an action by a carpenter

¹ *Broom v. Davis*, 7 East, 480, *n.*

² 7 East, 479.

against a farmer, for carpenter's work done on the farm, putting a roof on a lincay, &c. The defendant offered to prove that the work had been done in a very improper and insufficient manner, that the lincay was too weak in the roof, and after being covered with thatch, sunk in the middle, so as to let the water through, and that neither the rafters nor roof were sufficiently supported. Thompson, B., before whom the cause was tried, rejected the evidence on the authority of *Broom v. Davis*. The Court granted a new trial on this ground. Lord Ellenborough observed, that the action was on a *quantum meruit*, and the plaintiff ought to come into Court prepared to prove how much his work was worth, and therefore there was no injustice in suffering the defence to be entered into. Lawrence and Le Blanc, JJ., held that whether the action was on a *quantum meruit* or on a contract to pay a specific price, the plaintiff was bound to show that he had executed the work properly, and that the defendant might show that it was done improperly.

In *Farnsworth v. Garrard*,¹ the action was for work in rebuilding the front of a house, which, when finished, was considerably out of the perpendicular, and in great danger of tumbling down, according to some witnesses, though others said it might last for years. Lord Ellenborough said, "This action is founded on a claim for meritorious service. The plaintiff is to recover what he deserves. It is therefore to be considered how much he deserves, and if he deserves anything. If the defendant has derived no benefit from his services, he deserves nothing, and there must be a verdict against him. If the wall will not stand, and must be taken down, the defendant has derived no benefit from the plaintiff's service, but has suffered an injury. In

¹ 1 Campb. 38.

that case he might have given him notice to remove the materials. Retaining them, he is not likely to be in a better situation than if the plaintiff had never placed them there; but if it will cost him less to rebuild the wall than it would have done without these materials, he has some benefit, and must pay some damages."

In *Duncan v. Blundell*,¹ the plaintiff had erected a stove in the defendant's shop, and laid a tube under the floor for the purpose of carrying off the smoke. He sued for the price of his labour. The plan had entirely failed, and the stove could not be used. An attempt was made to show that the failure arose from some directions given by the defendant, but was not made out. Bailey, J., said—"When a person is employed in a work of skill, the employer buys both his labour and his judgment. He ought not to undertake the work if he cannot succeed, and he should know whether he will or not." The plaintiff was nonsuited.

*Chapel v. Hicks*² was an action on a special contract to erect buildings. The declaration contained a count on the contract and counts for money due for work: the defendant suffered judgment by default, and proved in reduction of damages that the work and building were not equal to what the defendant had contracted for. The jury returned a verdict for the full contract price; which the Court set aside, Lord Lyndhurst saying, "If the plaintiff has not performed the work in the manner which by the contract he agreed to do, he cannot recover on the contract, but must recover on the other counts of his declaration, for the work which he has done. Suppose on a contract to build a house of Baltic timber, the contractor builds it of timber of a different description; upon what principle is he entitled

¹ 3 Stark. 6.

² 2 C. and M. 214.

to recover, except for the work, labour, and materials?" Bayley, B., said—"The rule is, if the contract be not faithfully performed, the plaintiff shall be entitled only to recover the value of the work and materials supplied." The observations of Lord Lyndhurst in this case were either mistaken or are misrepresented, since the plaintiff was entitled to recover, and did recover, on the special contract, by the admission of the defendant, who, by omitting to plead, had confessed the contract, and that the plaintiff had done everything which it was necessary for him to do to recover on it. The decision supports the opinions of Lawrence and Le Blanc in *Basten v. Butter*, that even when the contract is specific as to the work to be done and price to be paid, the improper performance of the work renders the workman liable to an abatement of the price, but does not entirely preclude him from recovering on the contract.

The same law is applicable to the cases of workmen whose commodity is superior knowledge or skill, such as surveyors, surgeons, &c. In an action by an engineer for his services in planning and making estimates for a bridge, the defence was, that he did not bore or examine the soil for the foundation, and in consequence the company, for building the bridge, were put to an extra expense of £1600. Abbott, C. J., said—"If a surveyor who makes an estimate sues his employers for the value of his services, it is a defence that he did not inform himself, by boring or otherwise, of the nature of the soil of his foundation, and it turned out to be bad, for this goes to his right of action."¹ On another trial on the same claim, Best, C. J., stated the law to be, that unless the negligence and want of skill was to an extent that rendered the

¹ *Money Penny v. Hartland*, 1 C. and P. 352.

work useless to the defendants, they must pay him and seek their remedy in a cross action: "for if it were not so," he said, "a man might by a small error deprive himself of his whole remuneration." He further observed, "that a man should not estimate a work at a price he would not contract for it; for if he did, he deceived his employer."¹

An auctioneer, who was employed to sell a leasehold estate, failed to recover anything for his services because he had omitted to insert a condition in the particulars of sale, that the purchaser should not inquire into the landlord's title, and in consequence his employer was unable to make out a title to the purchaser, who refused to complete the purchase. Lord Ellenborough observed—"When the plaintiff proceeds upon a *quantum meruit*, the just value of his services may be appreciated; and if they are found to be wholly abortive, he is entitled to recover no compensation."²

So, in an action on an apothecary's bill, a defence that his treatment was unskilful was admitted. Lord Kenyon said—"In a case where the demand is compounded of skill and things administered, if the skill, which is the principal thing, is wanting, the action fails, because the defendant has received no benefit."³

If at any stage of the work the negligence or want of skill of the workman renders his work useless, he is entitled to no remuneration, though he may have done much work carefully and skilfully; because in cases where he does not perform his work strictly according to contract he is to be paid only the value which his whole work is to his employer.⁴

¹ 2 C. and P. 378.

² Denew v. Daverell, 3 Campb. 451.

³ Kannen v. M'Mullen, Peake, 83.

⁴ Bracey v. Carter, 12 A. and E. 373. Lewis v. Samuel, 8 Q. B. 685.

In claims by an attorney for remuneration for his services,¹ and by a shipowner for freight,² no deduction is allowed from the usual charges or the agreed freight, unless the negligence has rendered the service wholly useless.³ And in an action by a brickmaker for making bricks, Patteson, J., is reported to have ruled that no deduction could be made from the price for bricks which were badly made, only in a trifling degree, but that if any of the bricks were so badly made as to be good for nothing, and no benefit was or could be derived from them, the employer was entitled to deduct his loss from the stipulated price.⁴ This ruling is perhaps hardly consistent with the other authorities. It is submitted that the diminished value of the defective bricks and the whole price of the good-for-nothing ones should have been deducted.

43. Although the employer is entitled to make a deduction from the contract price where the work is not properly performed, and actually does so, he is also entitled to sue the workman for his breach of contract in not properly performing the work, and may recover any damage he has thereby sustained: he only abates the contract price by so much as the work done was worth less than the work agreed to be done, and does not, in all cases, deduct the whole amount of the damage he has sustained by the breach of contract.⁵ He is not bound to deduct from the contract price when the work is badly done, but may pay the full amount and sue for the damage he has sustained by the inferiority of the work.⁶

¹ *Templer v. McLachlan*, 2 N. R. 136.

² *Shiels v. Davies*, 4 Campb. 119, 6 Taunt. 65.

³ *Mondel v. Steel*, 8 M. and W. 871.

⁴ *Pardow v. Webb*, Car. and Marsh., 531.

⁵ *Mondel v. Steel*, 8 M. and W. 858. *Rigge v. Burbidge*, 15 M. and W. 598.

⁶ *Davis v. Hedges*, L. R. 6 Q. B. 687.

44. A manufacturer of goods is bound to manufacture them so as to answer the purpose for which they are ordered, if he is informed of the purpose for which they are wanted, and if they are capable of being so made. If, when made, the goods do not answer the purpose for which they were ordered, the employer, after giving them a reasonable trial, and finding them defective, may give notice of their insufficiency to the maker, and require him to take them away: after such notice they remain at his risk, and he cannot recover the price. But if the employer retains them beyond a reasonable time for trial without giving notice, or otherwise adopts them as his own, he is bound to pay their worth, but not the full contract price.¹ If he sustains damage by reason of the defective construction of the articles, he may maintain an action against the manufacturer.

The same law applies to a shopkeeper or dealer who undertakes to procure an article fit for a particular purpose, though he does not manufacture it. Each party undertakes that the article to be supplied shall be of a particular quality. A rope was ordered of a shopkeeper who dealt in ropes. He was told that it was wanted for the purpose of raising pipes of wine from a cellar. He took the order and procured a rope to be made, which his servants fixed to his customer's crane. The rope was not sufficiently strong, and broke whilst being used in raising a pipe of wine, which of course was spilled. The purchaser brought an action for its value. It was contended on the part of the seller of the rope, that it was a case of a sale of goods, and that as he did not warrant the rope, the maxim of *carcat emptor* applied. Tindal, C. J., thus distin-

¹ *Okell v. Smith*, 1 Stark. 107. Per Lord Tenterden, *Street v. Blay*, 2 B. and Ad. 463.

guished the case from that of an ordinary sale of goods: "If a party purchases an article on his own judgment, he cannot afterwards hold the vendor responsible on the ground that the article turns out unfit for the purpose for which it was required; but if he relies on the judgment of the seller, and informs him of the use to which the article is to be applied, the transaction carries with it an implied warranty that the thing shall be fit and proper for the purpose for which it was required."¹

The same law has been extended to the case of a manufacturer who makes articles for sale, though he does not make them to order, and sells them after they are made. He is understood as warranting them fit for the purpose for which they are apparently adapted, and for which he represents to the buyer they were manufactured. A man buying of a manufacturer relies on the manufacturer's judgment, honesty, care, and skill, rather than on his own judgment. Copper sheathing was sold by a manufacturer of that article for sheathing a ship: it wore away at the end of four months instead of lasting four years, which was the average duration of such a commodity; and although no fraud was imputed to the manufacturer, he was held liable for the injury sustained by the shipowner by reason of the defective condition of the copper.² A barge-builder, who had sold a new barge built by himself, and which was so defectively constructed that it was not reasonably fit for use as an ordinary barge, was, on the same principle, held liable for damages to the purchaser.³ In these cases the purchasers brought actions for the breach of the implied warranty: they

¹ *Brown v. Edgington*, 2 M. and G. 279.

² *Jones v. Bright*, 5 Bing. 553.

³ *Shepherd v. Pybus*, 3 M. and G. 868.

might have resisted actions for the price, had the things been wholly useless, or have abated the contract price if they were of some use; but inasmuch as the things sold and delivered were the identical things which they ordered and brought, they could not have returned them, or have refused to receive them. Thus, where a steam engine was sold to some millers, whose foreman inspected it before they bought it, and which was described as an engine of 14-horse power, but when set up proved to be only a 9-horse engine, it was held that the millers had no right to reject it, although they were entitled to an abatement of the price, and to sue for the breach of warranty.¹

The case is different if an article of a particular description is ordered to be made or bought, which the buyer believes will answer a particular purpose, but which is wholly ineffectual to produce the end proposed. In such case the buyer exercises his own judgment as to the utility of the article, and the seller is not responsible for its failure, if he supplies the article ordered without an express warranty. He agrees to make or sell, not an article fit for a particular purpose, but a particular article. This law is applicable to many cases of orders and sales of patented things. The plaintiff ordered a machine, called Chanter's Smoke-Consuming Furnace, for his brewery. It was of no use to him, and he objected to pay for it, but was obliged.²

45. The contractor is also bound to finish his work within the limited time, if any time is expressly limited by the contract. If the contract does not specify the time within which it is to be performed, it must be done within a reasonable time; that is, such time as

¹ Parsons v. Sexton, 2 C. B. 899.

² Chanter v. Hopkins, 4 M. and W. 399. Ollivant v. Bagley, 5 Q. B. 238.

in this respect is sufficiently compensated by a cross action when the contract is by deed; or by cross action or deduction, or both, in the case of a simple contract.

But if a sum of money is agreed to be paid expressly as a reward for diligence, performance within the time goes to the whole consideration, and is a condition precedent. The defendant agreed to purchase a house for a certain sum, and also agreed to pay £80 additional, providing the adjoining houses should be completed, *i.e.* roofed, sashed, and paved in front, by the 21st April, 1829, and it appeared that the pavement in front of the houses was not laid down before the 28th April, the delay being occasioned by the badness of the weather, which prevented the men from working, the plaintiff failed to recover any part of the £80.¹

If the contract provides for a penalty, or liquidated damage, to be paid for delay beyond a specified time, the completion within the time is not a condition to payment, because the parties have expressly provided for the consequences of delay. Thus in *Lamprell v. the Guardians of the Billericay Union*,² the plaintiff covenanted completely to finish the building before the 24th of June,—and the deed contained a provision, that if he should fail in the completion of all the works within the time specified, unless hindered by fire or other cause satisfactory to the architects, he should pay the defendants £10 per week so long as the works should remain incomplete,—the time was held not to be essential, because of the weekly sum to be paid for the delay.

If a day is limited for the completion of the contract, the contractor has until the last moment of the day to finish his work; if he has done by twelve at night, he has performed his contract.³

¹ *Maryon v. Carter*, 4 C. and P. 295.

² 3 Ex. 283.

³ *Startup v. Macdonald*, 6 M. and G. 593.

If the contract is to be performed within so many months, they are understood, in the absence of any usage of trade to the contrary, to mean lunar months of four weeks each.¹ If the time is limited from the time of making the contract, or from the time of any other act or event, the day of making the contract, or on which the act or event happens, is to be excluded in reckoning the time: thus if a man on the 1st of January contracts to build a house within six months from the time of making the contract, he is bound to have built the house, at the latest, on the 18th of June.²

46. If the contract provides, as it frequently does, for the payment of a stipulated sum by the contractor for delay, the sum so payable is a debt from the contractor to the employer. Such a sum is liquidated damage, and not a penalty.³ It is the sum which the parties have agreed shall be paid by the contractor to the employer for the injury from the delay, and although called a penalty in the contract it is still liquidated damage. If the payment is secured by a bond with a penalty, it is an additional circumstance to show it to be liquidated damage.⁴ The distinction between a penalty and liquidated damages is, that the one is a mere nominal sum to secure the performance of the act, and if the act is not performed, only the actual damage can be recovered; the other is a sum which is absolutely payable in the event of default, and against which there is no relief at law or in equity. If the contract provides that the contractor shall forfeit and pay the sum, such sum to be deducted from the contract price, and the employer

¹ Lang v. Gale, 1 Maule and Sel. 111.

² Lester v. Garland, 15 Ves. 248.

³ Fletcher v. Dyche, 2 D. and E. 32.

⁴ Ranger v. Great Western Railway Company, 5 House of Lords' Cases, 72.

pays the contract price without deduction, he may set off the penalty for delay against the price of extra work, or against any other claim which the contractor may have against him.¹ If by the contract the penalties for delay are to be deducted from the certificates, the employer cannot claim them in any other way.²

If the contract provides for the work being done before a certain day, and for a penalty being paid for delay, and the contractor is delayed by his employer in the commencement of the work or during its progress, he is not responsible for not completing the work within the time, or for the penalty : the act of his employer excuses him from the performance of his contract.³

A breach of contract by the employer, which does not necessarily operate to prevent the completion of the work within the time limited, and which may be sufficiently compensated in damages, does not excuse the contractor from the performance within the time, or from payment of the stipulated penalty for delay. The plaintiff covenanted with the Midland Counties Railway Company, that in consideration of £15,000, in addition to £258,629 10s. 6d., he, being provided by the company with railway bars, or rails and chairs, for temporary or permanent use, would complete a certain portion of the railway and the line of permanent railway on or before the 1st of June, 1840 ; and that if he should not complete the said railway by the 1st of June, 1840, he would pay to the defendants £300 for the 1st of June, and the like sum for every succeeding day, until the whole of the work should have been completed. He

¹ Duckworth v. Alison, 1 M. and W. 412.

² Macintosh v. Great Western Railway Company, 11 Jur. N. S. 684.

³ Holme v. Guppy, 3 M. and W. 387. Thornhill v. Neats, 8 C. B. N. S. 831. Roberts v. Bury Improvement Commissioners, L. R. 5 C. P. 310. Westwood v. Secretary of State for India, 7 L. T. N. S. 736.

sued the company for the £15,000, and they claimed to deduct £7,500 for penalties for delay. It appeared that the railway was not finished until twenty-four days after the 1st of June, but that the company did not supply the plaintiff with bars, rails, and chairs in sufficient quantity to enable him to complete the work by the 1st of June. The Court held that the covenant by the company to supply rails, and of the plaintiff to complete by the 1st of June, were independent covenants, and that the plaintiff was not excused from the penalties by the omission of the company to supply rails, because any other construction would lead to the conclusion, which they thought an unreasonable one, that the non-supply of a single rail or chair by the time specified for its delivery, although in the result wholly immaterial to the facilities for completion, would entitle the plaintiff to receive the £15,000 given for expedition money without his giving the expedition for it.¹

If the contractor is longer than the time limited about the work, in consequence of additional work being ordered to be done by the employer, he is not excused from the payment of the penalties for delay, if the deed allows additional time for the additional work. The plaintiff agreed to build a barn, waggon-shed, and granary, according to a specified plan, and the defendant was at liberty to order additional work. The specified work was to be finished on the 23rd of October; if not, the plaintiff was to pay £1 for every day that might be used beyond; but if the defendant required additional work, the plaintiff was to be allowed such extra time beyond the 23rd of October as might be necessary for doing and completing the same. The Court held that the circumstance of the defendant

¹ Macintosh v. Midland Counties Railway Company, 14 M. and W. 48.

ordering additional work did not exempt the plaintiff altogether from the penalty, but that he was *prima facie* liable to the £1 per day for every day consumed after the 23rd of October, but was to be allowed out of those days so many days as were necessarily employed in doing the additional work.¹ A provision that any extra works ordered shall be executed within the original time, unless an extension of time is allowed by the architect, is binding according to its terms; and it is no excuse to a claim for penalties for delay that it was impossible to execute the extra works within the original time.² If the time for completing the building is omitted, the penalties for delay are displaced.³

47. If the contract provides that the contractor shall obtain the certificate of the employer's architect before payment, he must do so. That he shall obtain such certificate is a condition precedent to his right to payment. A builder agreed to erect certain buildings under the superintendence of A. B. Clayton, or other the architect of his employer for the time being; and the contract, after providing for payment of portions of the price during the progress of the work, stipulated that the balance found due to the builder should be paid by the employer within two calendar months after receiving the said architect's certificate that the whole of the buildings and work thereby contracted for had been executed and completed to his satisfaction. Clayton had examined and approved of the builder's charges, and had written to the employer to that effect, but had not given a certificate that he was satisfied with the manner in which the work had been done. This was

¹ Legge v. Hurloch, 12 Q. B. 1015.

² Jones v. St. John's College, L. R. 6 Q. B. 115. See Roberts v. Bury Commissioners, L. R. 5 C. P. 325.

³ Kemp v. Rose, 1 Giff. 258, *ante*, p. 60.

held to be a condition precedent to the builder's right to recover for the work, and to apply to extra and additional works, as well as those specified in the contract.¹

In *Lamprell v. the Guardians of the Billericay Union*,² the contract provided that the builder should be paid 75 per cent. on the amount of the work from time to time actually done, to be ascertained and settled by the architects of the guardians, and the remaining 25 per cent., and the amount estimated by the architects as the value of the additional work, if any, within thirty days from the full completion of the contract; and that the builder should not be entitled to receive any payment until the works, on which such payments were made to depend, should have been completed to the satisfaction of the architects, who should examine and make a valuation of the amount so completed from time to time, and certify the same to the guardians, after which the builder should be entitled to receive the amount of payment, at the rate aforesaid, which should be then due in respect of work so certified to be completed. The Court intimated their opinion that a certificate by the architects was only necessary to enable the builder to draw 75 per cent. on account, and was not required on the completion of the contract.

In the case of an agreement between landlord and tenant that the tenant should expend £200 in altering and repairing the house, and that the alterations should be inspected and approved of by the landlord, and done in a substantial manner, and that the £200 should be allowed out of the rent,—it was held that the approval by the landlord was not a condition precedent to the allowance of the £200; that the substance of the

¹ *Morgan v. Birnie*, 9 Bing. 672.

² 3 Ex. 283.

agreement was that the works should be properly done, and that if they were properly done, the condition was substantially complied with; that it never could have been intended that the landlord should be at liberty capriciously to withhold his approval; and if such was the intention, the condition would go to the destruction of the thing granted, and be void. The Court observed, that, in *Morgan v. Birnie*, the architect was appointed as an arbitrator between the parties.¹

An architect agreed with a Committee of Visitors acting under the Act relating to lunatic asylums, to prepare the requisite probationary drawings for the approval of the committee, and all other drawings required to be submitted to the Commissioners of Lunacy and Secretary of State, pursuant to the statute, and subsequently to prepare the whole of the working drawings for a lunatic asylum for a stipulated sum, the Court of Common Pleas decided that the approval of the committee was a condition precedent to his right to be paid, and that they were the sole judges of the fitness of the plans, and that as they were a public body acting on behalf of the county, having no greater interest than any other inhabitant, they could not be considered as judges in their own cause.² So where, by a clause in the contract, the engineer for the time being had power to make such additions to or deductions from the work as he thought proper, and the value was to be ascertained and added or deducted from the contract price, and if any dispute arose, it was to be referred to the engineer, whose decision was to be conclusive. It was held to

¹ *Dallman v. King*, 4 Bing. N. C. 105. *Parsons v. Sexton*, 4 C. B. 909. *Stadhard v. Lee*, 3 B. and S. 368, 371.

² *Moffatt v. Dickson*, 13 C. B. 543.

be a condition precedent to the contractor's right to be paid for extras, that the amount should be ascertained, and, if the parties could not agree, it was to be ascertained by the award of the engineer.¹

If the contract provides merely that the architect shall certify that the work was done to his satisfaction, the certificate need not be in writing.² If it requires a direction in writing, under the hand of the architect, for additional works, mere statements of additions, prepared and furnished by the architect, but not signed by him, are not sufficient.³ A contract for railway works authorised the engineer, when requested by the contractors, to ascertain the extent and value of the works executed and materials provided for the works by the contractors, it was ruled that they were authorised to certify for materials provided for use though not actually fixed and used.⁴

Where a contract was that a ship should be built to the approval of G., and paid for on delivery, G.'s approval was not a condition precedent to payment.⁵ Where the agreement was to sell and fix a machine at a certain price, the last instalment to be paid on the buyer being satisfied with the work within two months of its completion, it was held that the employer's satisfaction only applied to the workmanship in fixing the machine, and was not a condition to the right to the price.⁶ Where a machine was to be made strong and of sound workmanship, to the approval of J., it was held that the approval was confined

¹ *Westwood v. Secretary of State for India*, 7 L. T. N. S. 736.

² *Roberts v. Watkins*, 14 C. B. N. S. 592.

³ *Myers v. Sail*, 3 E. and E. 306.

⁴ *Pickering v. Ilfracombe R. Co.*, L. R., 3 C. P. 235.

⁵ *Taylor v. Blythe*, 27 L. T. 101.

⁶ *Parsons v. Sexton*, 4 C. B. 899.

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³ *Myers v. Sarr*, 3 E. and E. 306.

⁴ *Pickering v. Ilfracombe R. Co.*, 1 L. R., 3 C. P. 235.

⁵ *Tayleur v. Blythe*, 27 L. T. 101.

⁶ *Parsons v. Sexton*, 4 C. B. 899.

to the strength and workmanship, and not to the efficiency of the machine.¹

If a man agree to do work or supply goods to the satisfaction of the agent or servant of his employer, he cannot insist on his work or goods being accepted if the agent is not satisfied on the ground of his being dependent on his employer; the contract, although unreasonable, is binding on him;² and if he agrees to work to the satisfaction of a company's engineer, it is no objection that the engineer is a shareholder, and that he is not aware of it. The engineer is not like a judge, supposed to be indifferent between the parties. The stipulation that certain questions shall be decided by the engineer is in fact a stipulation that they shall be decided by the company.³ On the same principle, where the engineer, who was to certify, had become lessee of the railway at a rent depending on the costs of the works, and the contractor, with knowledge of the fact, proceeded with the settlement of accounts, Turner, L. J., held that the engineer was not disqualified from exercising the powers vested in him by the contract.⁴ But where the architect, who was to certify as to the cost of erecting a church, had given the employer an assurance that it should not exceed a fixed sum, and this was unknown to the builder, it was held that, inasmuch as this was calculated to bias his judgment, the builder was not bound by the clause as to the certificate, and the Court of Chancery exercised the judgment which the architect ought to have exercised;⁵ and where the

¹ *Ripley v. Lordan*, 6 Jur. N. S. 1078.

² *Grafton v. Eastern Counties R. C.*, 8 Ex. 699.

³ *Ranger v. Great Western R. C.*, 5 H. Lds. 88.

⁴ *Hill v. South Staffordshire R. C.*, 11 Jur. N. S. 192.

⁵ *Kemp v. Rose*, 1 Giff. 358.

architect had contracted with his employer, unknown to the builder, that the cost of the building should not exceed a given sum, it was held to annul a clause that matters should be referred to his arbitration,¹ he having a personal interest to benefit himself by giving or withholding certificates.²

Where a charter-party provided that no allowance for short tonnage or deficiency in loading the ship should be made, unless the same should be certified by the defendants' presidents, agents, or chiefs and councils, or supercargoes, from whence she should receive her last despatch,—it appeared that the plaintiff had taken all proper steps to obtain the necessary certificates, but that, by the acts and defaults of the defendant's agents, it became impossible for him to obtain them, the Court held that the endeavour to obtain the certificate, so frustrated, was equivalent to performance of the condition.³

But in cases in which payment of the price of work is made dependent on the certificate of an architect or engineer, no action can be maintained for the price if the certificate is not obtained, though withheld by collusion with the employer. In such case the workman may maintain a special action against the employer for the breach of an implied stipulation in the contract.⁴ So where there is collusion between the contractor and the architect, the certificate does not bind the employers.⁵ But an action will not lie against the employer for the surveyor wrongfully and improperly refusing and neglecting to give his certificate. If he

¹ *Kimberley v. Dick*, L. R. 13 Eq. 1.

² *Sharpe v. San Paulo R. C.*, L. R. 8 Ch. 605.

³ *Hotham v. the East India Company*, 1 D. and E. 638. *Macintosh v. Great Western R. C.* 2 Mac. and G. 74.

⁴ *Milner v. Field*, 5 Ex. 829. *Batterbury v. Vyse*, 2 H. and C. 42.

⁵ *South-Eastern R. C. v. Watson*, 2 F. and F. 464.

refuses to exercise any judgment, the proper course, in the opinion of Willes, J., is to call upon the employer to appoint another surveyor who will do his duty.¹

When payment is to be made on the certificate of the engineer, and matters are left to his decision, the Court of Chancery will not interfere or entertain a bill for an account with respect to such matters, unless there has been gross misconduct on his part, wilful neglect or absolute incapacity to perform his duties.² At first, in the case of a contract to be completed to the satisfaction of a surveyor, which had been properly performed, but the surveyor refused to certify, equity declined to interfere, because the plaintiff had a remedy at law if the certificate was improperly withheld by the surveyor, the surveyor having no right to refuse his certificate arbitrarily.³ Afterwards it was held to be ground for relief in equity if the contractor was unable to obtain a certificate by the acts of the employer or his agent. Whether the acts arose from a fraudulent motive or not, to use them for the purpose of defeating the plaintiff's remedy constituted a fraud which the Court of Chancery would not permit the defendant to avail himself of.⁴ So Cranworth, C., in holding the plaintiff bound to obtain a certificate, says, "If there were anything like fraud or unfairness in the case, different considerations might arise."⁵

¹ *Clarke v. Watson*, 18 C. B. N. S. 278. *Stadhart v. Lee*, 3 B. and S. 364.

² *Scott v. Corporation of Liverpool*, 1 Giff. 216; 3 De G. and J. 334. *Cooper v. Uttoxeter Burial Board*, 11 L. T. N. S. 565. *Bliss v. Smith*, 34 Beav. 508. *Sharpe v. San Paulo R. C.*, L. R. 8 Ch. 507.

³ *Evan v. Churchwardens of St. Magnus*, Roils T. 1795, 6 D. and E. 716.

⁴ *Macintosh v. Great Western R. C.*, 2 Mac. and G. 74.

⁵ *Ranger v. Great Western R. C.* 5 H. Lds. 93.

And in a case where an architect acting in a judicial character was found to have been guilty of unfair conduct, or any other misconduct, as where by withholding certificates for money which he knew to be justly due, and coercing the builder, pressed for money to pay his workmen, to abandon the contract upon payment of a sum less than the fair value of his work, the Court of Chancery interfered by putting itself in the place of the architect, and ascertaining the amount for which the architect ought to have certified.¹ A similar decision was arrived at when the architect showed his partiality by refusing to certify, or to allow any other surveyor to go over the works, and having dismissed the builder, did not trouble himself to ascertain the value of the work.² And collusion between the employer and architect to injure the contractor is now of itself a ground for relief in equity.³

The want of a certificate may, it seems, be waived by acceptance of the work.⁴

If the contract is to pay a sum assessed by a third person, the valuation when made is in the nature of an award, and binding on both parties.⁵ The agreement to be bound by the certificate or decision of the surveyor is not a submission to arbitration, and cannot be made a rule of Court.⁶ Nor will an agreement to refer disputes to the surveyor give the Court of Chancery jurisdiction over matters which have been decided by his certificate.⁷ If the surveyor has certified an amount, and the employer has paid it, and the builder

¹ *Ormes v. Beadel*, 2 Giff. 166.

² *Pawley v. Turnbull*, 3 Giff. 70.

³ *Bliss v. Smith*, 34 Beav. 508.

⁴ *Lamprell v. Billericay Union*, 3 Ex. 305.

⁵ *Perkins v. Potts*, 2 Chit. 399.

⁶ *Wadsworth v. Smith*, L. R. 6 Q. B. 332.

⁷ *Sharpe v. San Paulo R. C. L. R.* 8 Ch. 597.

asks for more, and sues for it, Chancery will not restrain him by injunction.¹ The surveyor does not in all respects resemble an arbitrator. He is responsible for negligence to his employer, and may recover his charges as agent from him.²

48. The great duty of the employer is to pay. *Sine pecuniâ nil*, although not mentioned by Mr. Broom, is one of the most important maxims of the law, which, like the philosopher's stone, turns, or attempts to turn, everything it touches into gold. A blow on the head, a breach of the seventh commandment, or of a lover's vow, are severally transmuted in the legal crucible into so many pounds, so many shillings, and so many pence.

The General Rule is, that when a man bestows his labour for another, he has a right of action to recover a compensation for that labour.³ If he is employed without anything being said as to payment, the presumption is, that he is to be paid the value of his services according to the usual rate of remuneration; and in estimating the amount to be paid, the peculiar character of the services may be taken into consideration. Thus a surgeon, in suing on a general employment, may prove his skill.⁴

In the case of salvage services performed in rescuing a ship from wreck, the salvor is entitled to remuneration from the necessity of the case, although he does not work upon the retainer of the ship-owners.⁵ But in other cases of services voluntarily performed in taking care of a lost thing and searching for the owner, it is doubtful whether the finder has any right to remunera-

¹ Baron de Worms v. Mellier, L. R. 16 Eq. 554.

² Jenkins v. Betham, 15 C. B. 128.

³ Per Cur., Poucher v. Norman, 3 B. and C. 745.

⁴ Bird v. M'Gahey, 2 Car. and Kir. 707.

⁵ Newman v. Walters, 1 B. and P. 612.

tion for his services. It is clear that he has no lien upon the thing found.¹

49. If the service performed is an act of friendship or kindness, no remuneration can be claimed. If a person takes a journey to become bail for another, he cannot maintain an action against such person for his trouble or loss of time in such journey, because he does not undertake the journey as work or labour, or as a person employed by the defendant, but he does it as his friend, and to do him a kindness.²

A step-father brought an action against his step-daughter for her board, maintenance, and education. Lawrence, J., directed the jury to consider "whether the plaintiff, at the time he began to provide for her, expected to be paid at a future time; or whether he was not acting as every moral man who married a woman having children by her former husband would act; namely, taking care of those whose interests would be most dear to the woman he had chosen for his wife. A man who married a woman with children, whether he had fortune or no fortune with her, was not bound to provide for her children. As a moral man it might be expected from him, but the law would not enforce it. That which was at first intended for a gratuity could not be afterwards converted into a debt." The jury found for the defendant.³ In a similar case, it appeared that the step-child had some property, and that the step-father maintained and educated him in a manner superior to what he would reasonably have done had he been a member of his own family; and the step-son, when he came of age, promised to pay him for his

¹ Binstead v. Buck, 2 W. Bl. 1117. Nicholson v. Chapman, 2 H. Bl. 254.

² Reason v. Wirdnam. 1 C. and P. 434.

³ Pelly v. Rawlins, Peake, Ad. Cases, 226.

board and education. The step-father recovered; the Court considering that he had given the son an education proportionable to his future prospects, but beyond his own means, upon the expectation that the son would take it into his consideration after he came of age.¹

If services are rendered in expectation of a legacy, and not upon an understanding that they are to be paid for, there is no obligation to pay. The plaintiff brought an action for his services in transacting Mr. Guy's stock affairs. It appeared that he was no broker, but a friend; and it looked strongly as if he did not expect to be paid, but to be considered in the will. Lord Chief Justice Raymond directed the jury, that if that was the case, they could not find for the plaintiff, though nothing was given him by the will; for they should consider how it was understood by the parties at the time of doing the business; and a man who expects to be made amends by a legacy cannot afterwards resort to his action.² This direction was approved of in the case of an apothecary who had attended a deceased lady for eleven years, without ever sending in his bill. Tindal, C. J., there told the jury, that if the plaintiff had attended the deceased on an understanding that he was to be paid only by a legacy, he was not entitled to recover. They found for the plaintiff. The Court refused to disturb the verdict, upon the ground that it was not proved that there was any understanding that the plaintiff was not to be paid for his services except by a legacy; and that in the absence of such evidence, it must be presumed that the understanding was, that he should be remunerated in the usual way.³

¹ Cooper v. Martin, 4 East, 76. See Eastwood v. Kenyon, 11 A. and E. 448.

² Osborn v. the Governors of Guy's Hospital, 2 Str. 728.

³ Baxter v. Gray, 3 M. and G. 771.

50. The claim of a counsel on his client is a moral one only, whether the business is litigious or non-litigious. His fees ought to be paid at the time, and if they are not, he cannot sue for them.¹ A physician may sue for his fees unless prohibited by by-law of the College of Physicians. They have passed a by-law that no fellow of the College shall be entitled to sue for professional aid rendered by him. A licentiate, therefore, may sue, but a fellow cannot.² On an express contract to pay a barrister for services not relating to litigation, as for acting as returning officer on an election of guardians, or as arbitrator,³ or as auditor of the accounts of an estate, he may recover.⁴ It is said that an arbitrator cannot sue for his fees on an implied promise to pay him, but this is doubtful.⁵ It is decided that he may sue on an express promise,⁶ that he has a lien on the award for his fees, and that if he exacts an excessive amount, it may be recovered from him.⁷

51. If it is agreed that it shall be left to the employer whether anything and how much shall be paid for the services performed, it is optional with the employer to pay,—as where a person was employed by a committee of management for the sale of lottery-tickets, under a resolution that any service to be rendered by him should, after the third lottery, be taken into consideration, and such remuneration be made as should be

¹ *Kennedy v. Broun*, 13 C. B. N. S. 727. *Mostyn v. Mostyn*, L. R. 5 Ch. 458.

² 21 & 22 V. c. 90, s. 31. *Gibbon v. Budd*, 2 H. and C. 92.

³ *Egan v. Kensington Union*, 3 Q. B. 935, *n*. *Kennedy v. Broun*, 13 C. B. N. S. 729.

⁴ *Lowndes v. Earl of Stamford*, 18 Q. B. 425.

⁵ *Virany v. Warne*, 4 Esp. 46. *Re Coombs*, 4 Ex. 841. *Marsack v. Webber*, 6 H. and N. 5.

⁶ *Higgins v. Gordon*, 3 Q. B. 466.

⁷ *Barnes v. Braithwaite*, 2 H. and N. 569.

deemed right, it was held that no action could be maintained.¹ But if only the amount of payment is left to the employer, he is bound to award some amount; and if he fails to do so, a jury may award to the workman such a sum as the employer, acting *bonâ fide*, would and ought to have awarded. The plaintiff entered into the defendant's service upon the terms contained in a letter written by the plaintiff, in which he said,—“The amount of payment I am to receive I leave entirely to you.” Having served him for six weeks, he was held entitled to recover the value of his services, though the defendant had awarded him nothing.² The plaintiff agreed to accept the appointment of secretary to a company at a salary of £300, if the company was registered. “If not,” he said, “I shall be satisfied with any remuneration for my time and labour you may think me deserving of, and your means can afford.” It was held that there was no contract to pay for his services. It was a liability in honour, not in contract, and the Court preferred *Taylor v. Brewer* to *Bryant v. Flight*.³ If the amount of remuneration is to be fixed by a third person, no action can be maintained if he has not fixed the amount.⁴

Where a surgeon delivered a bill with a blank for his attendance, Lord Kenyon considered that he left the amount of his remuneration to the generosity of his patient, and could not recover more than he was willing to give him.⁵ And an attorney, after delivering his bill, cannot increase the amount of his charges,

¹ *Taylor v. Brewer*, 1 Maule and Sel. 290.

² *Bryant v. Flight*, 5 M. and W. 114. *Bird v. M'Gahey*, 1 C. and K. 707.

³ *Roberts v. Smith*, 4 H. and N. 315.

⁴ *Owen v. Bowen*, 4 C. and P. 93.

⁵ *Tuson v. Batting*, 3 Esp. 192.

though he may recover for items which have been omitted by mistake.¹

52. If the engagement of the employer in *Bryant v. Flight* had been—"I will pay the amount your services are worth, but will not be personally liable,"—the condition, leaving it optional with the employer to pay or not to pay, would have been repugnant and inconsistent with his engagement to pay; and as the engagement and its condition could not stand together, the condition would have been rejected, according to the principle by which agreements are construed against the party professing to bind himself and in favour of the other party. This is the law adverted to by Tindal, C. J., in *Dallman v. King*, and was the ground of the decision in *Furnival v. Coombes*.² In that case the plaintiff had agreed by deed, with the churchwardens and overseers of the parish of St. Botolph, Aldgate, to repair Aldgate church for a certain sum of money, which they covenanted to pay, but annexed to their covenant a proviso, that nothing in the deed should extend, or be construed to extend, to any personal covenant of, or obligation upon, the churchwardens and overseers, or anywise personally affect them, their executors, administrators, goods, estates, and effects, in their private capacity; but should be, and was intended to be, binding and obligatory upon the churchwardens and overseers for the time being, and their successors, as such churchwardens and overseers, but not further or otherwise. The Court held that, inasmuch as churchwardens and overseers could not bind their successors, the proviso that they should not be personally bound to pay was repugnant to the covenant, and void.

¹ *Loveridge v. Botham*, 1 B. and P. 49. *Eyre v. Shelley*, 8 M. and W. 154.

² 5 M. and G. 736.

A cross engagement by a contractor to exonerate one of several employers from personal responsibility is not open to this objection. A person employed in the formation of a railway company sued one of the provisional committeemen for his services. He pleaded that he became a committeeman on the other's engagement to indemnify him, and the plea was adjudged good.¹

53. Commission is a reward bargained for by an agent, measured, not by the amount of the labour of the agent, but by the benefit derived by the employer from his services. The word has passed from the employment to its fee, probably because the agent thinks most of the latter.

Generally an agent employed to negotiate a sale is entitled to commission if the relation of buyer and seller is really brought about by the act of the agent, although the actual sale has not been effected by him, and the parties cannot, by their agreement and completing the business without his interference, deprive him of his right.² On the sale of a ship through a ship-broker, the broker who first introduces the buyer is, by custom, entitled to commission.³ An agent who was to have a commission on all goods bought by customers introduced by him was entitled to commission on orders accepted by his employer, though he did not execute them.⁴ If the transaction is not fairly within the terms of the employment, the agent is not entitled to

¹ *Connop v. Levy*, 11 Q. B. 769.

² *Green v. Bartlett*, 14 C. B. N. S. 685. *Wilkinson v. Martin*, 8 C. and P. 1. *Murray v. Currie*, 7 C. and P. 584. *Mansell v. Clements*, L. R. 9 C. P. 139.

³ *Cunard v. Von Oppen*, 1 F. and F. 716.

⁴ *Lockwood v. Levick*, 8 C. B. N. S. 603. See also *Bray v. Chandler*, 18 C. B. 715. *Lara v. Hill*, 15 C. B. N. S. 45.

commission.¹ He is not entitled to commission on a sale to a company in which he is a shareholder.² If the agent does not find the purchaser, he is not entitled to commission in the event of a sale.³ Though an auctioneer, by the custom of business, is entitled to a commission on a sale of an estate after he has been employed to sell, and has advertised it for sale, though not sold through him, the publicity he gives the matter, and his connection, are considered as conducing to the sale.⁴

If the principal breaks his contract, and thereby prevents the agent from earning his commission, he is entitled to a reasonable remuneration for his services performed. Thus where an agent was to be paid a commission if he found a purchaser at a price named, and he found one, but the negotiation failed because the principal was not prepared to come forward as he ought, he was held entitled to recover upon an implied contract.⁵ A broker employed to dispose of the shares for a commission to be paid when all the shares were allotted, and the company wound up voluntarily before the shares were disposed of, succeeded in recovering for his services on the ground that the company had, by their own act, prevented the allotment of shares.⁶ But if the act or default of the employer, which prevents the commis-

¹ *Warde v. Stewart*, 1 C. B. N. S. 88. *Fullwood v. Akerman*, 11 C. B. N. S. 737. *Alder v. Boyle*, 5 C. B. 635. *Biggs v. Gordon*, 8 C. B. N. S. 638. *Leakey v. Lucas*, 14 C. B. N. S. 491.

² *Salomons v. Pender*, 3 H. and C. 639.

³ *Simpson v. Lamb*, 17 C. B. 603. *Gibson v. Crick*, 2 F. and F. 766. *Antrobus v. Wickens*, 4 F. and F. 291. *Green v. Mules*, 30 L. J. C. P. 343.

⁴ *Driver v. Cholmondeley and Rainey v. Vernon*, 9 C. and P. 559.

⁵ *Prickett v. Badger*, 1 C. B. N. S. 296.

⁶ *Inchbald v. the Western Neilgherry Coffee Company*, 17 C. B. N. S. 733. *Queen of Spain v. Parr*, 21 L. T. N. S. 555.

sion being earned, is not a breach of his contract, the case is different.¹

When payment is to be made out of a certain fund, there is no claim if there is no fund.²

54. It has been mentioned, in considering the duty of the workman to perform his work with skill and care, that although the work is not properly performed, the workman is entitled to be paid for its value. In cases also in which conditions precedent to payment have not been observed, as if it is not finished, or not finished in time, where to finish the work, or to finish it in time, is a condition precedent to payment, the employer is bound to pay the value of the work if he accept the work, or encourages the workman to proceed, or acquiesces in his proceeding, after the contract has been broken by him. A landlord agreed with his tenant to pay him for building a tap-room, provided it was built according to a plan to be agreed upon, and completed within two months. No plan was agreed upon, but the tenant built a tap-room. He did not complete it within two months. After the two months had elapsed, the landlord said that the chamber over the tap-room would be a useful room, and inquired when it would be finished. He also said, that if the tenant did not finish it soon, he, the landlord, would finish it; that the expense would be nothing to the tenant, as it would all fall upon him, the landlord. The Court gave judgment in favour of the tenant. They said,—“It is a settled rule, even in the case of a deed, that if there be a condition precedent, and it is not performed, and the parties proceed with the performance

¹ Bull v. Price, 7 Bing. 737. Moffatt v. Lawrie, 15 C. B. 583. Simpson v. Lamb, 17 C. B. 603.

² Higgins v. Hopkins, 3 Ex. 163. Ludman v. Entwistle, 7 Ex. 632.

of other parts of the contract, although the deed cannot take effect, the law will raise an implied assumpsit. Here, although the plaintiff cannot put his case upon the written agreement, he may go upon the agreement raised on so many of the facts of the case as are applicable. In *Ellis v. Hamlen*¹ there was no acquiescence by the defendant. Here is an acquiescence: for, first, the defendant uses all this building; secondly, he sees it go on, and never objects; thirdly, he sees a delay and says, Why does not the plaintiff go on, the expense is nothing to him; the expense will be mine? And he says, respecting the room above, that it will be very convenient.”²

The mere taking possession of land on which a building is erected, as to which the conditions have not been fulfilled, does not raise an inference of a waiver of the conditions of the special contract, or of entering into a new one. If indeed the employer does anything coupled with taking possession which prevents the performance of the special contract, as if he forbids the surveyor to enter to inspect the works, or if, the failure in complete performance being very slight, he uses any language or does any act from which acquiescence may be reasonably inferred, the case may be very different.³ And so it has been held in the case of a company who desired by their engineer alterations, additions, and omissions to be made, and stood by and saw the expenditure going on, and then refused payment on the ground that the estimate was increased without proper orders having been given for the purpose, they were precluded from objecting that the contractor had forfeited his right to payment by not finishing his work at the time

¹ 3 Taunt. 52.

² *Burn v. Miller*, 4 Taunt. 745. *Davis v. Nicholls*, 2 Chit. 320. *Lucas v. Godwin*, 3 Bing. N. C. 744.

³ *Munro v. Butt*, 8 E. and B. 753.

appointed, by having taken possession of and used the works, and made payments after the times fixed for their completion, and when, according to their contention, the right to such payments had been forfeited.¹

In such a case, a new contract to pay the value of the work is implied from the acceptance. Such a contract may also be implied if the employer absolutely refuses to perform, or renders himself incapable of performing, his part of the contract,² or if the special contract is by mutual consent rescinded. The money becomes due when the special contract is at an end, and not when the work was done.³

55. If the contract is to do several things for a single sum, the employer cannot resist payment because all the things contracted to be done have not been performed. The plaintiff covenanted to teach the defendant the art of bleaching materials for making paper, and to permit him, during the continuance of a patent, which the plaintiff then had, to bleach such materials according to the specification in the patent. The defendant, in consideration thereof, paid the plaintiff £250, and covenanted to pay him £250 more. In an action for the £250, it was held not necessary for the plaintiff to show that he had taught the defendant the art of bleaching, because it did not go to the whole consideration. The plaintiff was entitled to an action against the defendant for the non-payment of the £250, and the defendant to another against the plaintiff for not teaching him.⁴ But in such case, if the contract is

¹ *Hill v. South Staffordshire Railway Company*, 11 Jur. N. S. 193.

² *Keys v. Harwood*, 2 C. B. 905. *De Bernardy v. Harding*, 8 Ex. 822. *Prickett v. Badger*, 1 C. B. N. S. 296.

³ *Crosthwaite v. Gardner*, 18 Q. B. 640.

⁴ *Campbell v. Jones*, 6 D. and E. 570. *Stavers v. Curling*, 3 Bing. N. C. 355. *Mills v. Blackall*, 11 Q. B. 358.

a simple contract, and not a covenant, the defendant may give the plaintiff's breach of contract in evidence in mitigation of damages. The plaintiff, in consideration of £220 10s. to be paid by the defendant, agreed to sell, and plant on the defendant's land, a quantity of trees, and to keep them in order for two years after the planting. The Court held that the defendant might show, in reduction of damages, that trees of an inferior quality to those agreed for were planted, and that they were not kept in order.¹

56. If work has been done in a manner different from that specified in the contract, the employer is not bound to pay the contract price, nor the value of the work done. He is bound to pay the contract price, less the amount it will take to alter the work, so as to make it correspond with the specification.² This should be understood as applying to a case in which the employer either has, or intends to have, the work altered, and made to correspond to the original contract. If he has accepted the inferior work, and does not intend to have it altered, then it seems reasonable that the workman should recover the value of the inferior work, taking the contract price as the criterion of the value of the works specified; that is, that he should have so much less than the contract price, as the inferior is less valuable than the work contracted to be performed. For instance: if a builder has contracted to build a house with the best bricks at the price of inferior bricks, and he uses inferior bricks, and his employer accepts and uses the house, he ought not to recover the contract price, because he has not performed his contract, nor ought he to recover the value of the bricks used, because that might be as much or more than the contract

¹ Allen v. Cameron, 1 C. and M. 832.

² Thornton v. Place, 1 Moo. and Rob. 218.

price, and he must suffer for breaking his contract; nor ought the employer to be allowed for pulling down and rebuilding the house with the best bricks, because he does not intend to do so, but is content to accept the house built with inferior bricks. But the difference in value between the bricks agreed to be used and those actually used, should be deducted from the contract price; and by this means the builder will lose so just as much as he expected to gain by his roguery.

57. In cases in which there are contracts to do works for certain sums, employers are frequently called upon to pay more than the sums specified, in consequence of the contracts having been departed from, or for works extra the contracts. The rule in cases of deviations from contracts has been thus stated by Lord Kenyon: "Where additions are made to a building which the workman contracts to finish for a certain sum, the contract shall exist as far as it can be traced to have been followed, and the excess only paid for according to the usual rate of charging. I admit, that if a man contracts to work by a certain plan, and that plan is so entirely abandoned that it is impossible to trace the contract and say to what part of it the work shall be applied, in such case the workman shall be permitted to charge for the whole of the work by measure and value, as if no contract at all had ever been made."¹

If a workman is employed under a contract for a certain sum, and the work is done, with the consent of his employer, in some manner different from the manner specified in the contract, he is not entitled to more than the contract price, unless the deviations are of such a nature that the employer must have known that they would increase the expense, or unless the workman in-

¹ *Pepper v. Burland*, Peake, 139. See also *Ranger v. Great Western R. C.*, 5 H. of Lds. C. 118.

formed his employer, before departing from the contract, that such would be the consequence of the departure. In an action on a carpenter's bill, in which the work was done in altering a house which was originally undertaken on a contract for a fixed sum, but alterations were subsequently made in the original plan, and the plaintiff claimed to abandon the contract, and recover a measure and value price for all the work done,—Lord Tenterden observed—“ A person intending to make alterations of this nature generally consults the person whom he intends to employ, and ascertains from him the expense of the undertaking ; and it will very frequently depend on this estimate whether he proceeds or not. It is therefore a great hardship upon him if he is to lose protection of this estimate, unless he fully understands that such consequences will follow, and assents to them. In many cases he will be completely ignorant whether the particular alterations suggested will produce any increase of labour and expenditure ; and I do not think that the mere fact of assenting to them ought to deprive him of the protection of his contract. Sometimes, indeed, the nature of the alterations will be such, that he cannot fail to be aware that they must increase the expense, and cannot therefore suppose that they are to be done for the contract price. But where the departures from the original scheme are not of that character, I think a jury will do wisely in considering that a party does not abandon the security of his contract by consenting that such alterations shall be made, unless he is also informed, at the time of the consent, that the effect of the alteration will be to increase the expense of the work.”¹

If work is within the contract, it cannot be claimed as an extra because it is omitted from the specification.

¹ Lovelock v. King, 1 Moo. and Rob. 60.

Thus, when a contract was to complete a house, and the flooring was omitted from the specification, the builder had no right to claim it as an extra.¹

A contract for building a ship for the Portuguese government, provided that no charges were to be demanded for extras, but any addition made by an order in writing by Sir J. Sartorius was to be paid extra at a price to be previously agreed for in writing. Orders not in writing were given by the agents of the government, and executed. They were held to form part of the contract, and not to be paid for as extras.² And where there was a similar contract, and the employer himself gave a verbal order for extra work, it was held that there should be something beyond an order to entitle the builder to payment.³ But if the builder is told, or led to believe, by the employer or his authorised agent, that he is to be paid extra for the work, the case is different.⁴

When extra works have been done in addition to the contract, the workman is entitled to be paid for such works, although he has not performed his contract,⁵ and although the time for the payment of the contract price has not arrived.⁶

Extras are sometimes provided for by the contract, and sometimes by subsequent agreement, and are to be paid for accordingly.⁷

58. The consideration of the duty of the employer to pay involves that of the right of the workman to receive

¹ *Williams v. Fitzmaurice*, 3 H. and N. 844.

² *Russell v. De Bandeira*, 13 C. B. N. S. 149.

³ *Franklin v. Darke*, 3 F. and F. 65; 6 L. T. N. S. 291.

⁴ *Wallis v. Robinson*, 3 F. and F. 307. *Eccles v. Southern*, 3 F. and F. 142. *Hill v. South Staffordshire Railway Company*, 11 Jur. N. S. 193.

⁵ *Rees v. Lines*, 8 C. and P. 126.

⁶ *Robson v. Godfrey*, 1 Stark. 275. *Holt*, N. P. C. 236.

⁷ *Ranger v. Great Western R. Co.*, 5 H. of Lds. 99.

payment, and leads to that of his remedies to enforce it. He may not only maintain an action at law, but in the case of a chattel delivered to him to be worked upon, he has a lien upon or right to detain the chattel until the amount due for his work bestowed upon it is paid. This right of lien, generally speaking, exists wherever a movable thing has been delivered to a workman to be improved or altered, and he has improved or altered it by bestowing his labour upon it. Thus a shipwright has a lien on a ship delivered to him to be repaired;¹ and a farmer has a lien on a mare delivered to him to be covered by a stallion.² But there is no lien when the thing is not altered, nor its value improved, by the labour of the workman bestowed upon it;³ or when no labour is bestowed upon and mixed up with the thing itself.⁴ Nor is there any lien when its existence is inconsistent with the agreement of the parties; as if credit is agreed to be given for payment of the price of the labour; or if the understanding is that the employer is to have and use the thing occasionally whilst the work is going on, as in the case of a livery-stable keeper, or an agister of cows. In the one case the owner of the horse is entitled to have and use it whenever he wishes, in the other the owner of the cows is entitled to milk them, which rights are considered to be inconsistent with a right of lien.⁵

A right of lien is lost by the workman relinquishing the possession of the thing. If, therefore, he delivers the thing to the owner, or pledges it, his lien is gone.⁶

¹ Exp. Ockendon, 1 Atk. 235.

² Scarfe v. Morgan, 4 M. and W. 270.

³ Stone v. Lingwood, 1 Str. 651.

⁴ Steadman v. Hockley, 15 M. and W. 553.

⁵ Jackson v. Cummins, 5 M. and W. 350.

⁶ Scott v. Newington, 1 Moo. and Rob. 252.

It is lost if he refuses to deliver it upon tender of the amount due;¹ or if he claims a right to detain for any cause other than his lien:² but he does not lose his lien merely by demanding more for his work than he is entitled to.³ When a chattel is made for another it may be provided that the property shall not pass until the price is paid, and that the maker shall be entitled to recover possession in case of nonpayment, and this, although called a lien in the agreement, is not strictly a lien, but a continuation of the workman's property.⁴

A workman who keeps a chattel by virtue of his lien is not, in the absence of express agreement, entitled to charge for keeping it.⁵

59. It is also the duty of the employer not to do any act which will prevent the workman from performing his contract, and also to do every act agreed to be done by him, to enable the workman to perform his contract. If, by the employer doing or omitting to do any act, the workman is prevented from performing his contract, he is excused from the performance, and is, so far as he has been disabled by the employer, entitled to recover from the employer any damage he may have sustained by the act or omission of the employer.

A publication was commenced by some booksellers, called "The Juvenile Library," and they employed an author to write a volume for it, on Costume and Ancient Armour, for £100. When he had written a considerable part of the work, they abandoned the publication. He refused to allow them to publish his work separately, and commenced an action, and re-

¹ Jones v. Tarleton, 9 M. and W. 675.

² Boardman v. Sill, 1 Campb. 410.

³ Scarfe v. Morgan, 4 M. and W. 270.

⁴ Walker v. Clyde, 10 C. B. N. S. 381.

⁵ British Empire Shipping Company v. Somes, E. B. and E. 353, 8 H. of Lds. 338.

covered £50, although he had not finished or tendered his work, they having exonerated him from so doing by abandoning the publication.¹ A tenant covenanted to expend £100 in substantial repairs and improvements to a dwelling-house, under the direction and with the approbation of some competent surveyor, to be named by the landlord. The landlord failed to recover against the tenant for not expending the money upon the premises, because he had not named a surveyor.² In the case already mentioned, in which the calico-printer demanded from the engraver rollers sent to be engraved, before the work was finished, Rolfe, B., expressed his opinion that the engraver, who was bound to deliver the rollers when demanded, would have a right of action for being prevented from completing the work.³

So in the case of *Hotham v. East India Company*,⁴ the plaintiff, having been prevented from obtaining the certificates by the act and default of the agents of the Company, was in the same situation as if he had obtained them. And in *Dallman v. King*,⁵ it was the duty of the landlord to approve of the repairs, if substantially done; and therefore, by improperly withholding his approbation, he could not defeat the tenant's right to the allowance. And in *Bryant v. Flight*,⁶ it was the duty of the defendant to award to the plaintiff a reasonable remuneration for his services, and his not doing so did not prevent the plaintiff recovering. And in *Holme v. Guppy*,⁷ the defendant not having given the plaintiff possession of the ground

¹ *Planché v. Colburn*, 8 Bing. 14. *Inchbald v. Western, &c., Company*, 17 C. B. N. S. 733.

² *Coombe v. Green*, 11 M. and W. 480.

³ *Lilley v. Barnsley*, 1 C. and K. 344, ante, s. 38. *Davis v. Mayor of Swansea*, 8 Ex. 808. *Kewley v. Stokes*, 2 C. and K. 435.

⁴ 1 D. and E. 638, ante, s. 47.

⁵ 4 Bing. N. C. 105, ante, s. 49.

⁶ 5 M. and W. 114, ante, s. 51.

⁷ 3 M. and W. 387, ante, s. 46.

for three weeks after the date of the contract, and he being delayed for a week by the default of the masons employed by the defendant, excused him from finishing his work within the time specified, and from payment of the penalties provided for delay.

When the words of a contract show that its efficiency is to depend upon an act to be done by one party, there is a contract by that party that he will do all that lies in his power to bring about that act, and that if it is not already done it shall be done. Thus, on a contract with a Board of Health to do works under the Public Health Act, the contractor was to be paid when the money was collected from the owners of the property chargeable, a contract by the Board of Health to exercise the powers vested in them by the Act to enforce payment of the moneys was implied.¹

When plans and specifications for a work are prepared by an engineer for the employer, there is no contract by the employer that the specification is sufficient, and that it is reasonably practicable to execute the work in the mode prescribed; as to those matters the contractor can and should judge for himself before he enters into the contract.²

A contract is also implied by the employer that the work agreed for does not infringe the rights of others, and if it does, without the knowledge of the workman, the employer is bound to indemnify him.³

If the workman who has not stipulated for payment before the work is finished refuses to proceed without security, the employer is justified in withdrawing from the contract.⁴

¹ *Worthington v. Sudlow*, 2 B. and S. 508.

² *Thorn v. Mayor, &c., of London*, L. R. 9 Ex. 163.

³ *Dixon v. Fawcus*, 3 E. and E. 537.

⁴ *Pontifex v. Wilkinson*, 1 C. B. 75, 2 C. B. 349.

60. Contracts sometimes contain a power for the employer to dismiss the contractor in certain events. These powers are reasonably construed. It was provided that if the contractor should from bankruptcy, &c., be prevented from or delayed in proceeding with the works, or should not proceed therein to the satisfaction of the surveyor, the contract should, at the option of the employers, become void, and *the amount already paid* be considered as the full value of the works, and provision was made for payment by instalments. It was read by the Court "the amount, *if any*, already paid," and decided that the employers were entitled to dismiss the contractor, although no payment had been made.¹

A deed provided that the work might be taken out of the contractor's hands if he failed to comply with a notice in writing given him by his employer's engineer to rectify improper work, or proceed with due expedition. A notice requiring him to supply all proper and sufficient materials for the due prosecution of the work and to proceed with due expedition was held sufficiently particular, though if the engineer had required any work altered it should have been more particular.² A contract empowered the architect to extend the time for completing the works in certain specified cases, and also empowered the employers, in case the contractor should not, in the opinion and according to the determination of the architect, make such due progress as would enable the works to be completed by the time fixed, to take the works out of the contractor's hands. The completion of the works within the agreed time was prevented by the default and breach of contract of the employers, and the architect not having ex-

¹ Davis v. Mayor of Swansea, 8 Ex. 808.

² Pauling v. Mayor of Dover, 10 Ex. 750.

tended the time, they dismissed him. It was ruled in the Exchequer Chamber, reversing the judgment of the Common Pleas, that they had no power to do so, because the terms of the contract did not make the architect judge as to whether there had been a breach of contract on the part of the employers. The Court says—"When the effect of giving such a construction to the contract is to put one party completely at the mercy of the other, it ought not to be so construed unless the intention is pretty clearly expressed. The employers ought to take care to select words which the contractor could not misapprehend if such was their object," and as the contract did not expressly make the architect judge as to whether or not there had been a breach of contract by the employer, the ordinary rule prevailed that the default of the employer excused the delay of the contractor, and the power to dismiss could not be acted upon. It was also held that in cases in which the architect had power to extend the time the contractor could not claim an extension when none had been granted.¹ A contract empowered the employers to enter and employ workmen, and deduct the cost from the money payable to the contractor, if the works did not proceed as rapidly and satisfactorily as required by them. It was held to be no plea that the works proceeded as rapidly and satisfactorily as the employers could reasonably and properly require; but that so long as the employers acted *bonâ fide* under an honest sense of dissatisfaction, although it might be unfounded and unreasonable, they were entitled to insist on the condition.² If the architects are to ascertain and decide as to whether there has been delay or unsatisfactory conduct without appeal, before the employers

¹ Roberts v. Bury Commissioners, L. R. 4 C. P. 755, 5 C. P. 310.

² Stadhart v. Lee, 3 B. and S. 365.

take possession of the works, the agreement cannot be made a rule of Court as a submission to arbitration, as this would in effect be an appeal against their decision.¹ If the power to dismiss is improperly exercised, the contractor does not become entitled to be paid for the work irrespective of the contract, but has his remedy in damages for the wrongful act of the employer.² Unless the case is so clear as to be almost undisputed, an injunction will not be granted to restrain the employer from taking the works out of the contractor's hands, on the ground of comparative injury: the contractor, if improperly dismissed, having an adequate remedy in damages, the injury to the employer by having the work done in an improper and insufficient manner being greater.³ On the same principle, when the contractor becomes bankrupt, the employer will not be restrained from taking the works out of the hands of the assignees. If there are any stipulations showing that confidence was placed in the unusual skill of the contractors, or if it is provided that they shall set out the works and be responsible for any errors, and provide and employ such number of workmen as the architect deems necessary, it is doubtful whether the assignees have the right to proceed with the works.⁴

A power to take the works from the contractor, and use plant, is in the nature of a penalty to secure the performance of the works, and the employer who exercises it is bound to account to the contractor for the value of his property taken possession of, or is entitled to be allowed the sum properly expended in

¹ *Wadsworth v. Smith*, L. R. 6 Q. B. 332.

² *Ranger v. Great Western Railway Company*, 5 H. of Lds. 95.

³ *Garrett v. Banstead Railway Company*, 4 De G. J. and S. 462.
Munro v. Wivenhoe Railway Company, 11 Jur. N. S. 612.

⁴ *Knight v. Burgess*, 10 Jur. N. S. 166.

completing the works against what would have been payable to the contractor under the contract had he completed it.¹ Where the power was that, on default of the contractor, his employers (a railway company) might take the execution of the works out of his hands, use his plant, and that, in addition to all other rights, the plant which might then be on the works should become the absolute property of the company, and be valued or sold, and the amount of the valuation or sale credited to the contractor in reduction of the moneys, if any, recoverable from him by the company, Lord Romilly held that the power to use the plant implied that it continued the property of the contractor, and that it did not become the property of the company unless they had sustained loss or expense; and he restrained them from removing the plant, except so far as necessary for opening the line.²

61. The contract between master and servant is, that the servant shall serve the master in a particular capacity, for a definite or indefinite time, in consideration of wages to be paid by the master; and that the master shall pay wages, in consideration of the service to be rendered by the servant. The general duties of the servant upon this contract are to serve, and serve properly: the general duties of the master are to employ, and pay wages.

First, it is the duty of the servant to serve for the time prescribed by the contract. To ascertain the extent of this duty, the duration of the period must be determined. The general understanding of parties is, that a general hiring of a servant, without any circumstance to show that a less time was meant, is a hiring

¹ *Ranger v. Great Western Railway Company*, 5 H. of Lds. 107.

² *Garrett v. Salisbury, &c., Railway Company*, L. R. 2 Eq. 358.

for a year.¹ The reason given is, that both master and servant may have the benefit of all the seasons.² This rule applies to the cases of all servants who are hired in a permanent capacity for an indefinite time, such as servants in husbandry, domestic servants, trade servants, reporters to newspapers, &c.³

62. The hiring of a domestic or menial servant, though for a year, is subject to be determined at any time by a month's warning on the part of the master or the servant, or by payment of a month's wages by the master in lieu of warning.⁴ This custom applies, although the contract between the master and servant is in writing, if the written agreement does not negative or is not inconsistent with it.⁵

A head gardener, who had the management of a gentleman's hot-houses and pineries, at the wages of £100 a year, with a house within the master's grounds, and the privilege of taking two apprentices, and who had five under-gardeners employed for his assistance, was held to be a menial servant within the custom, whom his master was entitled to dismiss upon a month's notice. Lord Abinger said, "I should have been inclined to have told the jury that the plaintiff was a menial servant; for though he did not live in the defendant's house, or within the curtilage, he lived in the grounds within the domain."⁶

¹ Co. Litt. 42, b. *Rex v. Seaton v. Beer*, Cald. 440. *Rex v. Macclisfield*, 3 D. and E. 76. *Rex v. Worfield*, 5 D. and R. 506.

² Per Best, C. J., *Beeston v. Collyer*, 2 C. and P. 609.

³ See *Holcroft v. Barber*, 1 C. and K. 4. *Baxter v. Nurse*, 1 C. and K. 10.

⁴ *Archard v. Hornor*, 3 C. and P. 349. *Robinson v. Hindman*, 3 Esp. 235. *Turner v. Mason*, 14 M. and W. 116, per Parke, B.

⁵ *Johnson v. Blenkinsop*, 5 Jur. 870. *Mentzer v. Bolton*, 9 Ex. 518.

⁶ *Nowlan v. Ablett*, 2 C. M. and R. 54.

A huntsman has been held to be a menial servant within the custom, Erle, C. J., saying that the law applied "when the service was of such a domestic nature as to require the servant to be frequently about his master's person or grounds; and when, if any ill-feeling should arise between them, the constant presence of the servant would be a source of infinite irritation and annoyance to the master." Byles, J., said, "menial would seem to be derived from *ménage*, one of the retinue or attendance."¹

A governess is not a domestic or menial servant within this rule. The position which she holds in a family, and the manner in which she is usually treated in society, place her in a very different situation from that which mere menial and domestic servants hold.²

63. A trade servant, servant in husbandry,³ or other servant not menial, who is engaged for a year, cannot be dismissed until the end of the year. If the contract is not determined at the end of the first year, but the relation is continued, a new contract is understood to be made to serve for another year, on the same terms as those of the preceding year's service, and so from year to year, until either party puts an end to the relation at the end of some year. But neither party can lawfully determine the relation of master and servant during the currency of any year.

The plaintiff had been for many years in the service of the defendant as his clerk, in his business of army agent, at a salary of £500 a year, which was at first paid quarterly, but afterwards monthly. His service commenced on the 1st March, 1811, and he was discharged on the 23rd December, 1826. He recovered £83 damages for his discharge. On an application to

¹ Nicoll v. Greaves, 17 C. B. N. S. 27.

² Todd v. Kerrick, 8 Ex. 151. ³ Lilley v. Elwin, 11 Q. B. 742.

set aside the verdict, on the ground that there was no evidence of a yearly hiring, Best, C. J., observed, "It would be indeed extraordinary, if a party in the plaintiff's station of life could be turned off at a moment's notice, like a cook or scullion. If a master hire a servant without mention of time, that is a general hiring for a year; and if the parties go on four, five, or six years, a jury are warranted in presuming a contract for a year in the first instance, and so on for each succeeding year, as long as it pleases the parties. It is not necessary for us now to decide whether six months, three months, or any notice be requisite to put an end to such a contract; because, under the circumstances of the present case, after the parties had consented to remain in the relation of employer and servant, from 1811 to 1826, we must imply an engagement to serve by the year, unless reasons are given for putting an end to the contract."¹

In an action by a reporter for the *Morning Post* newspaper, on a contract to employ him for a year, it was held to be no plea that the defendant tendered the plaintiff a reasonable sum above his wages in lieu of notice, and on his refusal to accept it, gave him notice of his intention to put an end to the service a reasonable time before his dismissal, because it did not appear that the notice expired with the year, and by the terms of the contract, the service could only be determined with the year.² And an agreement between master and servant for the servant to serve three years at the master's option, at a yearly salary, is a yearly hiring, and the master can only determine the service at end of a year.³

¹ Beeston v. Collyer, 4 Bing. 309. Huttman v. Boulnois, 2 Car. and Payne, 510.

² Williams v. Byrne, 7 A. and E. 177. ³ Down v. Pinto, 9 Ex. 327.

The cases do not establish that in the case of a contract to serve and employ from year to year, any notice is necessary to determine the relation of master and servant at the end of a year. If any such notice is necessary, it must be so either by the express agreement of the parties, or by the general understanding and practice of masters and servants in similar cases. There is no reason for any such notice, since each party knows that the contract of service will expire, if not renewed, at the end of each year.

In *Fairman v. Oakford*,¹ Pollock, C. B., says:—"There is no inflexible rule that a general hiring is a hiring for a year. Each case depends on its own circumstances. From much experience of juries, I have come to the conclusion that the usual indefinite hiring of a clerk is not a hiring for a year, but rather one determinable by three months' notice." The plaintiff having on a former occasion accepted a month's salary from his master on his dismissal, it was found that the hiring was determinable by a month's notice. When by custom of trade the hiring is determinable by a month's notice, it applies when there is an agreement in writing for a year, with a provision that the master will, if the business prospers, add to the salary at the end of the year.²

64. The circumstance of the wages being payable weekly or monthly is a circumstance to show that the hiring and service is to be for a week, and from week to week, or for a month, and from month to month, and not for a year. Thus, where a pauper had hired himself as a plumber and glazier, for board, lodging, and wages of six shillings per week, he was held to be a weekly and not a yearly servant.³ In another case, as

¹ 5 H. and N. 635.

² *Parker v. Ibbetson*, 4 C. B. N. S. 346.

³ *Rex v. Dedham*, Bur. S. C. 653.

to the settlement of a pauper who had been hired as an ostler, at four shillings per week, in which it was decided that he was a weekly servant, Buller, J., thus stated the law: "If there be anything in the contract to show that the hiring was intended to be for a year, the reservation of weekly wages will not control the hiring. But if the reservation of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring."¹ A similar decision was come to in a case where the servant was to have four shillings a week, except in the harvest time, when his wages were to be increased to ten shillings and sixpence a week, and afterwards to be reduced to four shillings. The provision for an increase of wages at harvest time did not make him an annual servant.² And in another, where the agreement was that the servant should have eight shillings per week, and two guineas for the harvest.³

But if the parties show an intention to bind themselves to serve and employ for a longer period than a week, the reservation of weekly wages does not control the time of service, and the period for service is a year. Thus, where a farm servant was hired at three shillings a week the year round, with liberty to go on a fortnight's notice, the Court held it to be an express contract to serve the year round, with power for either party to determine it by a fortnight's notice.⁴ A miller hired a servant at three shillings and ninepence per week, with liberty of parting on a month's notice on either side. This was held to be an annual hiring,

¹ *Rex v. Newton Toney*, 2 D. and E. 453. *Rex v. Odiham*, 2 D. and E. 622. *Evans v. Roe*, L. R. 7 C. P. 138.

² *Rex v. Droitwich*, 3 Maule and Sel. 243.

³ *Rex v. St. Mary, Lambeth*, 4 Maule and Sel. 315.

⁴ *Rex v. Birdbrook*, 4 D. and E. 245.

determinable by a month's notice, the provision for the month's notice showing that the parties intended to bind themselves to serve and employ for more than a week.¹

In an action by a warehouseman against his employer, the agreement was: "William Cash engages to pay Thomas Fawcett £12 10s. per month for the first year, and advance £10 per annum until the salary is £180, from the 5th March, 1832." This was held to be a contract for a year, because by agreeing to pay £12 10s. per month for *the first year*, the parties contemplated that the service was to continue for one year, at all events, and that it might continue for four, in which case there was to be a yearly advance of salary.²

A contract by an author to write tales for a weekly publication, extending over the period of a year, for which he was to be paid £10 a week for each number, was held to be a contract for a year. His agreement to furnish matter week by week did not make it a weekly engagement. The weekly payments were instalments.³

An agreement for twelve months certain, and to continue from time to time, until three months' notice given by either party to determine the same, may be determined by notice at the end of the twelve months.⁴ An agreement for twelve months certain, after which either party to be at liberty to terminate it by three months' notice, may be put an end to at the end of the twelve months without notice.⁵ An agreement at a yearly

¹ Rex v. Humpreston, 5 D. and E. 205. Rex v. Great Yarmouth, 5 Maule and Sel. 114. Rex v. St. Andrew in Pershore, 8 B. and C. 679.

² Fawcett v. Cash, 5 B. and Ad. 904. Davis v. Marshall, 4 L. T. N. S. 216.

³ Stiff v. Cassell, 2 Jur. N. S. 348.

⁴ Brown v. Symons, 8 C. B. N. S. 208.

⁵ Langton v. Carleton, L. R. 9 Ex. 57.

salary, determinable by a three months' notice, may be determined by notice at any time.¹

65. The nature of the service is also an important circumstance to be taken into consideration, in order to ascertain whether the understanding of the parties was that the employment should be for a year. In a case in which it appeared that the plaintiff had been employed to write articles for a new monthly publication,—he had written an article each month, and been paid £10 per month,—the jury found that he was not employed for the year, notwithstanding it was proved that the usual engagement of editors, sub-editors, and reporters to newspapers was annual.² In another case, the plaintiff had been engaged as editor of a new review, at three guineas a week, with a progressive increase of salary according to the sale of the review. The custom, that the engagement of editors, &c., to newspapers was for a year, unless otherwise expressed, was proved. The jury found that the contract was not for a year's service, but for a week, and so on from week to week. The Court refused to disturb the verdict, on the ground that it was not an inflexible rule that contracts for services, without any definite arrangement as to time, were contracts for a year, but a presumption to be raised from contracts of the same kind; and that the circumstance that the publication was new, was material to be taken into consideration.³ In these two cases, the plaintiffs, having been employed to serve the defendants as editors of new publications, which might not answer, their services might not be required for a year.

The presumption that the hiring was general for a

¹ Ryan v. Jenkinson, 25 L. J. Q. B. 7.

² Holcroft v. Barber, 1 C. and K. 4.

³ Baxter v. Nurse, 1 C. and K. 10; 6 M. and G. 935.

year cannot be made in a case in which there is no evidence of the hiring, and in which occasional payments have been made by the master, but not at any fixed and definite periods. In such case the occasional payments warrant the inference of a hiring at will, and a servant may recover the value of his services, although he has not served a year.¹

Nor does the presumption apply when the duration of the service is expressed to be at the will of either of the parties. Thus, a boy who entered into the service of a farmer, for meat and clothes, as long as he had a mind to stop, was held to be a servant at will, and not for a year.²

66. A man may contract to serve for his life, but it is said that the contract in such case should be by deed.³ The authority referred to does not warrant this position. It was an action of debt against executors, in which the plaintiff counted that he was retained by the testator for the term of his life in peace and war, at 100 shillings a year, and that his salary was in arrear for two years. It was objected that the action was brought against executors, and no speciality was shown, and judgment was given against the plaintiff. The action failed, not because the contract was invalid, but because an action of debt on simple contract did not lie against executors, which depended on the old law of law wager.⁴

67. Personal considerations being the foundation of the contract between master and servant, the death of

¹ Bayley v. Rimmell, 1 M. and W. 506.

² Rex v. Christ's Parish, York, 3 B. and C. 459. Rex v. Great Bowden, 7 B. and C. 249.

³ Wallis v. Day, 2 M. and W. 273.

⁴ 2 Hen. 4, 14, pl. 12. Bro. Laborers, pl. 44. Vin. Abr. Master and Servant, N. 5.

either party puts an end to the relation.¹ And where an agent was employed in a partnership business carried on by two partners, the Court held that the relation was determined by the death of one of the partners.² But the parties may agree that the contract shall continue to the executors. Thus, when an apprentice was bound to a tradesman and his executors carrying on the same business, the death of the master did not determine the apprenticeship; but his executrix, who continued his business, was bound to teach him, and he bound to serve her.³ It is also an implied condition that the servant should continue able to serve, and if he is disabled without fault on his part, he is excused from serving for a time, if the illness is temporary; or if permanent, and such as entirely disables him from performing the contract, it has the effect of death.⁴ In such case the servant should forthwith give the master notice of his illness, and if he incurs any expense by reason of the failure to give notice, he has a claim on the servant for an indemnity.⁵ The case of permanent illness not only excuses the servant from serving, but entitles the master to put an end to the contract, and dismiss. If he does not dismiss him, but takes his chance of recovery, he is bound to pay his wages during his illness, and until he elects to dismiss him.⁶ There is also an implied warranty by the servant that he is of skill reasonably competent to the task he undertakes, and, if he is not, the master may dismiss him.⁷

68. If the hiring is at so much for the service, or so

¹ *Farrow v. Wilson*, L. R. 4 C. P. 744.

² *Tasker v. Shepherd*, 6 H. and N. 575.

³ *Cooper v. Simmons*, 7 H. and N. 707.

⁴ *Boast v. Firth*, L. R. 4 C. P. 1. *Robinson v. Davison*, L. R. 6 Ex. 269.

⁵ *Robinson v. Davison*.

⁶ *Cuckson v. Stones*, 1 E. and E. 248.

⁷ *Harmer v. Cornelius*, 5 C. B. N. S. 236.

much for a year, or other period of time, the servant must perform the whole service, or serve for the whole period, before he is entitled to any wages ; and if, from any cause, he does not perform the whole service, or serve the whole time, he is entitled to no part of the wages, because the contract is to pay a certain sum for a certain service, and not to pay that sum, or a portion of it, for part of the service.

Throgmorton was appointed by the Earl of Plymouth, by writing, to receive his rents, and the Earl agreed to pay him £100 per annum for his service. Throgmorton died three-quarters of a year after his appointment, and his executrix brought an action for £75. Judgment was given against her, because, without a full year's service, nothing could be due, and the year's service was in the nature of a condition precedent. There was no difference between wages and rent, or an annuity ; and it being one consideration and one debt, could not be divided.¹ It has been attempted, but without success, to apply the Apportionment Act² to the case of salary payable for services when the employment was determined before the salary became due.³

If the agreement is to pay wages so much a month for a voyage, the wages are due at the end of each month, and this is not controlled by the master agreeing to pay wages in consideration of the services to be duly performed. They do not make the due performance of the month's service a condition precedent to the right to recover any wages.⁴

Cutter v. Powell⁵ was an action by the administrator

¹ Countess of Plymouth v. Throgmorton, 1 Salk. 65.

² 4 & 5 W. IV. c. 22, now 33 & 34 Vic. c. 35.

³ Lowndes v. Earl of Stamford, 16 Jur. 903.

⁴ Button v. Thompson, L. R. 4 C. P. 330.

⁵ 6 D. & E. 320 ; 2 Smith, Leading Cases, 1.

of a sailor, who had died during a voyage from Jamaica to Liverpool, for his services as second mate, from the time of entering the ship until the day of his death. The terms of his engagement were contained in the following note, signed by the defendant: "Ten days after the ship 'Governor Parry,' myself master, arrives at Liverpool, I promise to pay to Mr. T. Cutter the sum of 30 guineas, provided he proceeds, continues, and does his duty as second mate in the said ship from hence to the port of Liverpool. Kingston, July 31st, 1793." The Court held that the plaintiff was not entitled to recover anything, because the defendant only engaged to pay the intestate on condition of his doing his duty on board during the whole voyage; and he was to be entitled either to thirty guineas or to nothing; for such was the contract between the parties.

If the servant is dismissed for misconduct before any wages have become payable by the terms of the contract, he is entitled to nothing. In an action for wages by a yearly servant of a farmer, who had been dismissed during the year for misconduct, Lord Ellenborough observed,—“If the contract be for a year's service, the year must be completed before the servant is entitled to be paid.” The servant abandoned his action by withdrawing a juror.¹ In another action, by the foreman of silk manufacturers, who was to have wages at the rate of £80 per year for his services from January to June, when he was dismissed for misconduct,—the Court held that the plaintiff was not entitled to recover anything; Parke, J., observing, that the *prima facie* presumption was that the plaintiff was hired for a year, and there was nothing to rebut that presumption; and having violated his duty before the year expired, so as to prevent the defendants from having his services

¹ Spain v. Arnott, 2 Stark. 256.

for the whole year, he could not recover wages *pro ratâ*.¹

The same law was acted upon in *Ridgway v. the Hungerford Market Company*,² in which the plaintiff had been appointed clerk to the company at a salary of £200 a year, which was payable quarterly, and had been dismissed for misconduct during a quarter. Lord Denman said, that if a party hired for a certain time so conduct himself that he cannot give the consideration for his salary, he shall forfeit the current salary, even for the time for which he has served. The other Judges said, that in such case he shall not recover his salary. The latter expression is the more correct, as by reason of the dismissal before the salary becomes due, the event has never happened on which it was to become due, namely, service for the whole of the period agreed.

In *Lilley v. Elwin*,³ the plaintiff was a farm labourer, hired generally at £10 10s. for the year, and was discharged for misconduct at the end of ten months,—the Court decided that he was entitled to no wages, saying, “If the plaintiff had been guilty of disobedience of orders, and unlawfully absenting himself from his work, so as to justify his discharge, and the defendant had discharged him, the plaintiff was entitled to nothing; the contract being £10 10s. for the year, and no part of the wages being due till the end of the year. If, on the other hand, the discharge was not justifiable, the plaintiff was at liberty to treat that discharge as a rescinding of the contract by the defendant, and sue for his wages *pro ratâ* up to the time of the unjustifiable discharge.”

According to *Hulle v. Heightman*,⁴ even where the

¹ *Turner v. Robinson*, 5 B. and Ad. 789.

² 5 Ad. and El. 171.

³ 12 Jur. 623.

⁴ 2 East, 145.

servant is improperly discharged by the master before any wages have become due, he is not entitled to recover wages as wages, because the whole of the stipulated service has not been performed; but his remedy is for damages, for the master's breach of contract for preventing him from serving. This decision is disapproved by Mr. Smith,¹ on the ground that the act of the master operates as a rescission of the contract by him, which act the servant may adopt, and sue the master for the value of his services on a contract inferred from the fact of the master having accepted the services actually rendered. This view appears to have been adopted by the Court in *Lilley v. Elwin*.

In *Crocker v. Molyneux*² a servant was hired at thirty guineas and a suit of clothes: he was dismissed before the end of the year, and commenced an action for the clothes. Lord Tenterden ruled that if he was improperly dismissed whereby he was prevented from becoming entitled to the clothes, he had his action for that; but he could not maintain an action of trover, because he had no property in the clothes until he had served a year.

But if the servant improperly leaves the service after wages have become due, he does not forfeit those wages.³

69. It may be provided that misconduct shall operate as a forfeiture of wages, and in such case wages payable but not paid are forfeited,⁴ and a mere continuation in the service will not condone the forfeiture. There must be a new consideration to create a liability to pay the wages forfeited.⁵

¹ 2 *Leading Cases*, 11.

² 3 C. and P. 470.

³ *Taylor v. Laird*, 1 H. and N. 266.

⁴ *Taylor v. Carr*, 4 L. T. N. S. 415. *Walsh v. Walley*, L. R. 9 Q. B. 367.

⁵ *Monkman v. Shepherdson*, 11 A. and E. 411.

70. When the wages are *at the rate of* so much per year, and not so much per year, they are divisible; and if the servant is discharged without notice during the year, he may sue for his wages up to the time of his dismissal as a debt, and can only recover them in that shape.¹ And perhaps in such case he is entitled to wages up to the time of his dismissal, if he is dismissed for misconduct. The case of *Turner v. Robinson*, already cited, is to the contrary. There the Court appear to have considered that no wages were due until the end of the year, although they were made payable *at the rate of* £80 per year. In the case of a domestic servant, the wages are payable *de die in diem*, in proportion to the period of service.²

71. It is also the duty of the servant to serve properly. He must obey the just and reasonable commands of his master. He should be careful and faithful to his master's interests and property committed to his charge, and behave with decency, and consistent with his character as servant. If he is guilty of wilful disobedience of the master's lawful command, or habitual neglect of the duties of his service, or conducts himself with dishonesty towards his master, or with gross indecency in the master's house and in relation to his service, or acts in a manner inconsistent with his station of servant, he violates an essential condition of the contract, and may be dismissed. But a disobedience not wilful and contumacious, or of an order which he is not bound to obey, or which does not properly appertain to the character of his service,³ or a neglect which is not seriously injurious to the

¹ *Hartley v. Harman*, 11 A. and E. 798.

² Per Lawrence, J., *Cutter v. Powell*, 6 D. and E. 326. *Huttman v. Boulnois*, 2 C. and P. 512.

³ *Price v. Mouat*, 11 C. B. N. S. 508.

master's interests, does not justify the master in dismissing the servant.

72. The wilful disobedience of a just and reasonable command of the master, which the servant on entering into the service has contracted to obey, is a breach of duty which authorises the master to put an end to the contract of service, and to dismiss the servant.

The command must be just and reasonable, and have reference to the service which the servant has contracted to perform.¹ The servant is not bound to risk his safety in the service of the master, but may, if he think fit, decline any service in which he reasonably apprehends injury to himself.²

A master told his servant to go with the horses to the marsh, which was a mile off, before dinner. It was the servant's usual dinner hour, and dinner was then ready. The servant said that he had done his due, and would not go till he had had his dinner. The master told him to go about his business. He went accordingly, and brought an action for his wages. Lord Ellenborough said,—“If the plaintiff persisted in refusing to obey his master's orders, I think he was warranted in turning him away. There is no contract between the parties except that which the law makes for them; and it may be hard upon the servant, but it would be exceedingly inconvenient if the servant were permitted to set himself up to control his master in his domestic regulations. After a refusal, on the part of the servant, to perform his work, the master is not bound to keep him on as a burthensome and useless servant to the end of the year.”³

A carpenter was employed to repair a gentleman's

¹ 2 Jacquot v. Bourra, 7 Dowl. 348.

² Per Lord Abinger, Priestley v. Fowler, 3 M. and W. 6.

³ Spain v. Arnott, 2 Stark. 256.

house in the country. He sent his servants down to do the work. In consequence of a complaint from the gamekeepers, the men were directed not to go into the preserves. One of them afterwards went into the preserves, and was dismissed. Coleridge, J., left it to the jury to say, whether the workman did not go down to Staunton (the name of the seat) on the understanding and undertaking that he was to conduct himself decorously and properly,—and whether the master was not justified in dismissing him. He observed, that if the master employed men who acted so as to disoblige his customers, by going into their gardens and preserves, when they were told not, he would soon find that he was injured in his business, and would lose his custom, because gentlemen would not employ him. The jury found that the master was justified in dismissing the workman.¹

In an action for dismissing a domestic servant, the defendant pleaded that the plaintiff asked for leave of absence, which he refused ; but she nevertheless left his service, and remained absent all night, and until the following morning, wherefore he discharged her. She replied, that she requested leave of absence, because her mother had been seized with sudden sickness, and was in imminent danger of death ; and because the defendant wrongfully and unjustly refused his permission she went without, and did not cause any hindrance to him in his domestic affairs, and was not guilty of any improper omission or unreasonable delay in her duties. The Court gave judgment against the plaintiff, on the ground that her replication did not allege that she gave notice to the defendant of her mother's illness. Pollock, C. B., remarked,—“It is very questionable whether any service to be rendered to any other person

¹ Read v. Dunsmore, 9 C. and P. 588.

than the master would suffice as an excuse ; she might go, but it would be at the peril of being told that she could not return." Parke, B., said,—"*Primá facie* the master is to regulate the time when his servant is to go out from and return to his home. Even if the replication had stated that he had had notice of the cause of her request to absent herself, I do not think it would have been sufficient to justify her in disobedience to his order." Alderson, B., said,—“There may, undoubtedly, be cases justifying a wilful disobedience of an order of the master ; as, when the servant apprehends danger to her life or violence to her person from the master, or when, from an infectious disorder raging in the house, she must go out for the preservation of her life.”¹

A man was engaged by a farmer as a waggoner, but during harvest he worked in the field generally. The practice was, during harvest, to work until eight in the evening. The waggoner refused to work till that hour, because, he said, that strong beer of good quality was not allowed him, according to a pretended custom, and the beer supplied being, as he alleged, very bad small beer, and not so good as water. There was no such custom as to beer, and his master discharged him for this refusal to work. The Court of Queen's Bench held that he was justified in so doing.²

In an action by a courier for his wages, it appeared that his mistress had dismissed him before his year's service was up, because, in getting into her carriage at Padua, she had desired him not to stop at a particular hotel, where she had been before, but at another ; but he, notwithstanding, did stop at the forbidden hotel, and, when remonstrated with, said he had not been told ; and at the second hotel was sulky, and neglected to

¹ Turner v. Mason, 14 M. and W. 112.

² Lilley v. Elwin, 11 Q. B. 742.

come on two or three occasions when rung for, and was insolent in manner at Florence. Parke, J., told the jury that there was a contract for a year, with an implied agreement that if there was any moral misconduct, either pecuniary or otherwise, wilful disobedience, or habitual neglect, the defendant should be at liberty to part with the plaintiff; and that, in his opinion, no such conduct had been proved. The jury found for the plaintiff.¹

A clerk wrote for £140, including £30 due to himself for salary. The master remitted him £100 for business purposes; he applied £30 towards his salary, and the master dismissed him. The judge left it to the jury to decide whether the clerk had been guilty of any wrongful and improper misappropriation of money or disobedience of orders. They found for the plaintiff. The Court refused to disturb the verdict, but appear to have considered that if the clerk had known that the master did not intend him to pay himself out of the £100, there would have been a wilful disobedience sufficient to justify the dismissal.²

73. In an action by a servant for a month's wages, on the ground of his having been discharged without warning, it was proved that he had been negligent in his conduct, frequently absent when his master wanted him, and often slept out at nights. Lord Kenyon ruled that the plaintiff was not entitled to recover, on account of his misconduct.³

A surgeon attempted to justify the dismissal of his pupil and assistant, with whom a premium had been paid, from his service, because he had occasionally come to his house intoxicated, and at such late hours that he could not compound the medicines, on which occasions

¹ *Callo v. Brouncker*, 4 C. and P. 518.

² *Smith v. Thompson*, 8 C. B. 44.

³ *Robinson v. Hindman*, 3 Esp. 234.

he had ordered the shopboy to compound them. Lord Denman said,—that the assistant coming home intoxicated was not of itself a sufficient cause for dismissing him ; but that his employing the shopboy to compound the medicines, if thereby real danger was occasioned to the master's business, was. He considered the case as intermediate between that of an apprentice, who cannot be dismissed for misconduct, and that of a servant who can.¹ A teacher of French and drawing in a school did not return to the school for a long and unreasonable time after the holidays had expired ; but it did not appear that the master was obliged to hire another, or that the teacher's department was not adequately filled, or that the master was delayed or injured in the matter in which he would have employed the teacher during the time of his absence. The neglect was held not sufficient to entitle the master to dissolve the contract and dismiss the teacher, though it might be a breach of contract by the teacher, and support an action against him at the master's suit.²

The neglect to justify a dismissal must be such as to cause an injury to the master, and as demonstrates that it will be injurious to the master to continue the servant in his employ. And so a disobedience, not wilful and contumacious, which will justify a dismissal, must be such as to occasion an injury and loss to the master.³ It must go to the whole consideration, a question somewhat difficult to decide.⁴

74. If the servant is absent during the period of service in consequence of temporary sickness, it is not

¹ *Wise v. Wilson*, 1 C. and K. 662. See also *Lacy v. Osbaldiston*, 8 C. and P. 80.

² *Filleul v. Armstrong*, 7 A. and E. 557.

³ *Cussons v. Skinner*, 11 M. and W. 161.

⁴ *Gould v. Webb*, 4 E. and B. 933. *Lomax v. Arding*, 10 Ex. 734.

a neglect or breach of duty. The master is bound to provide and take care of him during his sickness, and cannot dismiss him, or even deduct his wages for the time during which he is sick.¹

If the servant, towards the expiration of his period of service, absents himself without the leave, or even in disobedience of the master, for the purpose of seeking another engagement at a usual time, it is not a breach of his contract. A farm servant, hired for a year, three days before his year's service was up, asked leave of his master to go to a statute fair, to be hired for the next year. The master refused leave, but the servant went. The Court held that the master was not justified in dismissing him for this cause. "Consider," said they, "how the case stands with regard to the servant. He knew his master designed to part with him at the year's end, and therefore it was high time for him to look out for another place. To this end, he applied in a very proper manner for leave to go to the statute fair, which was a place where, in all likelihood, he might have provided himself, and not be obliged to lie idle all the year, it being usual for people in the country to go thither to hire their servants. The master, like an unreasonable man, refused so reasonable a request. As therefore the request was reasonable, and upon a just ground on the side of the servant, and the refusal unreasonable on the side of the master, we think the servant's going afterwards, without leave, is no forfeiture of his former service."²

The servant is entitled to holidays sanctioned by the

¹ *Rex v. Islip*, 1 Str. 423. *Rex v. Christchurch*, Bur. S. C. 494. *Rex v. Sharrington*, 2 Bott. 322. *Rex v. Maddington*, Bur. S. C. 675. *Chandler v. Grieves*, 2 H. Bl. 606, n. *Rex v. Sudbrook*, 1 Smith 59, per Le Blanc, J. *Exp. Harris*, 1 De Gex, 165; 9 Jur. 497.

² *Rex v. Islip*, 1 Str. 423. *Rex v. Polesworth*, 2 B. and Ald. 483.

custom of trade, though there is a written agreement, and no mention of holidays in it.¹

75. Any act of dishonesty by the servant during the service, to the injury of the master's property or business, is a breach of duty which will justify his dismissal, as well as render him liable to an action. An accountant employed by a joint stock company, at an annual salary, entered in their books, under the orders of the managing director and the secretary, a sum of £1080 as paid for salt, which to his knowledge had been spent in the purchase of shares. It was held that the company were justified in dismissing him as an improper person to fill the situation of their accountant.² A manufacturer was held justified in dismissing his foreman, because he had advised his apprentice to abscond from his service, and assisted him to go to America. The manufacturer also recovered damages in an action against the foreman.³ The manager of a business buying goods in which his master dealt, as agent for another, is misconduct which justifies his dismissal.⁴

But a traveller who solicits his master's customers to deal with him when his service is at an end is not guilty of a breach of his relative duty. In an action against the defendant, who had been the plaintiffs' traveller, for seducing their customers, Lord Kenyon observed,—“The conduct of the defendant in this case may perhaps be accounted not handsome, but I cannot say that it is contrary to law. The relation in which he stood to the plaintiffs, as their servant, imposed on him a duty which is called of imperfect obligation, but not such as can

¹ *Rex v. Stoke-upon-Trent*, 5 Q. B. 303.

² *Baillie v. Kell*, 4 Bing. N. C. 638. See also *Willetts v. Green*, 3 C. and K. 59.

³ *Turner v. Robinson*, 6 C. and P. 15; 5 B. and Ad. 789.

⁴ *Horton v. McMurtry*, 5 H. and N. 667.

enable the plaintiffs to maintain an action. A servant, while engaged in the service of his master, has no right to do any act which may injure his trade or undermine his business; but every one has a right, if he can, to better his situation in the world; and if he does it by means not contrary to law, though the master may be eventually injured, it is *damnum absque injuriâ*. There is nothing morally bad, or very improper, for a servant who has it in contemplation, at a future period, to set up for himself, to endeavour to conciliate the regard of his master's customers, and to recommend himself to them, so as to procure some business from them as well as others. In the present case, the defendant did not solicit the present orders of the customers; on the contrary, he took for the plaintiffs all those he could obtain: his request of business for himself was prospective, and for a time when the relation of master and servant between him and the plaintiffs would be at an end."¹

76. The understanding of the parties on a contract between master and servant is, that the servant shall conduct himself with morality and decency while in the master's service; and if he is guilty of any breach of duty in this respect, the master may dismiss him. A female servant, hired for a year, was dismissed because she was with child. Lord Mansfield said,—“I think the master did not do wrong. Shall he be bound to keep her in his house? To do so would be *contra bonos mores*, and in a family where there are young persons, both scandalous and dangerous.”² So a master was held to be entitled to discharge a man who had got his female servant with child.³ A clerk and traveller, who had been hired for a year, and lived and boarded in the

¹ Nichol v. Martyn, 2 Esp. 732. ² Rex v. Brampton, Cald. 11.

³ Rex v. Welford, Cald. 57.

master's house, made an assault upon his female servant, with intent to ravish her, for which he was dismissed ; and it was held rightly.¹

But the fact of the servant having been the father of a bastard child before the master hired him, or being guilty of a crime of that description out of his master's house, does not justify his dismissal. It is not seducing the master's servant, or turning his home into a brothel.²

77. An act of a servant, inconsistent with his character of servant, is a breach of his duty which justifies the master in dismissing him. The Directors of the Hungerford Market Company resolved to dismiss their clerk, which resolution he, according to the duties of his office, entered in a book, and under it subjoined a protest by himself against the proceeding, and they at once dismissed him. Lord Denman desired the jury to say whether the entry of the protest by the clerk justified his dismissal without notice. They found that it did.³ A wine-merchant dismissed his clerk, because he claimed to be a partner. He was held justified ; because, having disclaimed being a servant, if the master had suffered him to go on in his employment, the nature of his situation might have been doubtful, and evidence that he really was a partner.⁴

78. When a master dismisses his servant for misconduct, he need not at the time of his dismissal state the cause ; and if he assigns an insufficient cause for the dismissal, and a sufficient one exists, he may justify the dismissal on the ground which existed, though he can-

¹ Aikin v. Acton, 4 C. and P. 208.

² Per Lord Mansfield, in Rex v. Westmeon, Cald. 129.

³ Ridgway v. the Hungerford Market Company, 3 Ad. and El. 171.

⁴ Amor v. Fearon, 9 Ad. and El. 548.

not do so on the cause assigned;¹ and this though, at the time of the dismissal, he did not know of the cause. His right to dismiss depends on the misconduct of the servant, and not upon his knowledge of it, and if he is justified in dismissing the servant, no inquiry can be made into his motive for doing so.² But in the case of a curate whom a rector had agreed to employ until, by fault by him committed, he should be lawfully removed, it was decided that the rector could not exercise the power of removal, without notifying to the curate the cause.³

If, after knowledge of the servant's misconduct, the master continues him in his service, and accepts his services, it may amount to a condonation of the misconduct,⁴ and the master cannot, on any subsequent cause of displeasure, dismiss the servant for the previous misconduct.

79. If the wages was payable *pro rata*, and not lost by reason of the misconduct, or if the servant is not dismissed, the misconduct may be taken into consideration in estimating the value of the servant's services, and he is not entitled to his full wages, as he would have been had he served faithfully and properly.⁵ A shopman to a silversmith sued for four quarters wages. He had during his service embezzled silver spoons and money, received by him for his master.

¹ Ridgway v. the Hungerford Market Company, 3 Ad. and El. 171. Baillie v. Kell, 4 Bing. N. C. 638. Mercer v. Whall, 5 Q. B. 466.

² Willetts v. Green, 3 C. and K. 59. Spotswood v. Barrow, 5 Ex. 110. Cussons v. Skinner, 11 M. and W. 161. Smith v. Allen, 3 F. and F. 157 contra.

³ Martyn v. Hind, 1 Doug. 142. Cowp. 437.

⁴ Per Ld. Denman, 3 Ad. and El. 174. Per Blackburn, J., Phillips v. Foxall, L. R. 7 Q. B. 680. See Monkman v. Shepperdson, 11 A. and E. 411.

⁵ Baillie v. Kell, 4 Bing. N. C. 638.

Lord Tenterden ruled, that if the servant habitually embezzled his master's property, the amount embezzled is immaterial, and although the amount of wages may exceed it, he is not entitled to anything.¹ So an agent who had made profits by selling his own spirits mixed with those of his principals, and destroyed books of account, was disallowed his commission.²

In one case, Alderson, B., had refused to allow the defendants to go into evidence of misconduct in an action for salary; saying, that if the plaintiff was guilty of misconduct, and the defendants did not put an end to the contract when they might, and he continued to perform the work, he was entitled to be paid for it.³ This was an action by a dissenting minister for his services, and the misconduct imputed probably did not diminish the value of the service performed.

80. It results from the duty of the servant to serve, that the master is entitled to what his servant produces in his capacity of servant. If he hires him to invent, he is entitled to his inventions. Thus a calico-printer is entitled to a book provided by himself, in which his head-colourman enters the processes for making colours, although such book contains processes of the colourman's own invention. The inventions are the property of the master.⁴ If the master is the inventor of a machine or process for which he is entitled to a patent, he may include in his patent subordinate improvements suggested or invented by his servants.⁵ And if he employs servants or agents to make such improvements, he is, it seems, entitled to

¹ Brown v. Croft, 6 C. and P. 16.

² Gray v. Haig, 20 Beav. 219.

³ Cooper v. Whitehouse, 6 C. and P. 515.

⁴ Makepeace v. Jackson, 4 Taunt. 770.

⁵ Allen v. Rawson, 1 C. B. 551.

letters patent for those improvements, the same as if they were his own invention.¹ But if the principal invention is discovered by the servant, the master is not entitled to a patent; because he is not the inventor, and by the patent law a monopoly can only be granted to the first and true inventor within this realm of a new manufacture.² A person who merely suggests the subject and employs and pays an author to write a drama or literary work, is not by virtue of the employment entitled to the exclusive right of representation or copyright, because the statutes vest such right in the author, and require the transfer of such a right to be in writing.³ The case is different of a person who plans a work and employs others to assist him in different parts of it;⁴ and the Copyright Act gives a qualified copyright to the publisher or proprietor of an encyclopædia or work published periodically or in parts in the contributions to such work.⁵

81. It also results from this duty that the master is entitled to the services of the servant, and may maintain an action against one who wrongfully deprives him of them, either by an act of violence, as by so beating the servant as to disable him from serving the master;⁶ or by negligence, as by negligent driving over the servant;⁷ or against a surgeon who, employed to cure the servant of a wound, administers unwholesome medicines on purpose to make the wound worse.⁸

¹ *Bloxam v. Elsee*, 1 C. and P. 564.

² *Rex v. Arkwright*, 8 Taunt. 395. 1 *Davies*, P. C. 61. *Winter v. Wells*, 1 Webster, P. C. 132. *Baker v. Shaw*, 1 Webster, P. C. 126.

³ *Shepherd v. Conquest*, 17 C. B. 427.

⁴ *Barfield v. Nicholson*, 2 Sim. and St. 1. *Hatton v. Kean*, 7 C. B. N. S. 268.

⁵ 5 & 6 Vict. c. 45, s. 18. *Sweet v. Benning*, 16 C. B. 459.

⁶ *Bac. Abr. Master and Servant*, O.

⁷ *Martinez v. Gerber*, 3 Man. and Gr. 88.

⁸ *Roll. Abr. 82. Rol. Rep. 124. 2 Bulst. 332.*

So he may sue any one who knowing the servant to be such entices him away, or continues to employ him in his service after notice.¹ And he may sue either for damages for the wrong, or for the value of the servant's work as a debt.² It is upon this principle that the ordinary action for seduction is founded; the female seduced always being stated and proved to be the servant of the plaintiff at the time of the seduction. The principle has been applied to the case of employer and employed. A theatrical manager has been held entitled to sue a rival manager for damages, who knowingly prevented a songstress from performing her engagement;³ but for an assault upon a singer by which he was disabled from singing, it has been decided that no action lies.⁴ Nor has the master any claim if the injury to the servant is the breach of a contract with the servant, as for an injury to a railway passenger.⁵

82. To enforce the duty of obedience, the master is entrusted with the power of correction. He may correct and punish his servant for abusive language, neglect of duty, &c.; but the chastisement must be moderate and usual, and he cannot delegate this power to another.⁶ Thus an upper servant cannot justify beating an under one.⁷

83. A contract between a master and servant, by which the servant agrees to serve for a certain time,—a year, for instance,—and the master agrees to pay wages, or salary, for the year's service, creates the relation of master and servant for the prescribed period;

¹ *Blake v. Lanyon*, 6 D. and E. 221.

² *Lightly v. Clouston*, 1 Taunt. 112.

³ *Lumley v. Gye*, 2 E. and B. 216. ⁴ *Taylor v. Neri*, 1 Esp. 386.

⁵ *Alton v. Midland Railway Company*, 19 C. B. N. S. 213.

⁶ *Bac. Abr. Master and Servant*, N.

⁷ *Reg. v. Huntley*, 3 C. and K. 142.

and the master is bound to continue that relation for the whole time. He is not bound to provide the servant with any particular work, or to keep him continually at work; but he is bound to retain him in his service; and if he dismisses him, and puts an end to the relation of master and servant before the expiration of the year, he breaks the contract, and is answerable to the servant in an action for damages. This was decided in an action on an agreement between an attorney and a company, by which it was agreed that the plaintiff, as solicitor of the company, should receive and accept a salary of £100 a year, in lieu of rendering an annual bill of costs for general business transacted by the plaintiff for the company as such solicitor; and that he should, for such salary, advise and act for the company on all occasions, in all matters connected with the company, with certain exceptions, and attend the secretary, the directors, and meetings of proprietors, when required. He complained that the company did not retain or employ him as their attorney, but dismissed him from being their attorney before the expiration of a year from his appointment. The Common Pleas gave judgment against the plaintiff, on the ground that there was no agreement by the company to retain and employ, but merely to pay him his salary. The Exchequer Chamber held that the agreement being to give a certain salary for one year at least, to the plaintiff, who engaged for it to give his services, if required, created the relation of attorney and client, and amounted to a promise to continue that relation at least for a year, though the company were not bound to furnish him with business, as an attorney and solicitor, at all events, or to require his advice, or use his services, as an attorney, whenever they had occasion to require the service of an attorney. "Medical ad-

visers," they said, "may be employed, at a salary, to be ready in case of illness; members of theatrical establishments, in case their labours should be needed; household servants, in performance of their duties when their masters wish: in these, and other similar cases, the requirement of actual service is distinct from the employment by the party employing. If it is held that such a contract as this was for service and pay respectively; and that although the employer determines the relation by an illegal dismissal, yet the employed may entitle himself for the whole time by being ready to serve, that doctrine, if sanctioned, will be of pernicious consequence in case of a business being discontinued or a dismissal for misconduct without legal proof. According to the plaintiff's construction, the agreement creates the relation of employer and employed; and the illegal determination of the relation entitles him to indemnity, the measure of damage being the actual loss, which may be much less than the wages, when another employment may be easily obtained. According to the defendant's construction, it is a contract for service and pay; and the whole salary, for all the time comprised in the contract, becomes due, if the plaintiff served, or was ready to serve." This judgment was affirmed by the House of Lords upon the opinion of a majority of the judges.¹

If an agreement between master and servant provides that the master shall be at liberty to dismiss the servant on giving him a month's notice, or paying him a month's wages, it implies an obligation by the servant to serve, and the master to employ, until the agreement is put an end to by the notice or payment of wages. In an action for harbouring the servant of a glass-

¹ *Elderton v. Emmens*, 4 C. B. 479. 6 C. B. 160. *Emmens v. Elderton*, 13 C. B. 495; 4 H. of Lds. C. 624.

maker, it appeared that there was an agreement between the glass-maker and his workman, that the workman should serve the glass-maker for seven years, and should not, during the term, work for any other person ; that during any depression of the trade, he should be paid a moiety of his wages ; that if he should be sick or lame, the master should be at liberty to employ any other person in his stead, without paying him any wages ; that the master should pay him, so long as he continued to be employed, wages by the piece, and £8 per annum in lieu of house-rent and firing, and should have the option of dismissing him from his service upon giving him a month's wages or a month's notice. It was objected that this agreement was void for want of mutuality, and as an unreasonable restraint of trade, there being no obligation on the master to employ ; but the Court held that an obligation by the master to employ was necessarily to be inferred from the option to dismiss, and that the obligation to serve, and the restraint on the workman against working for any others, were co-extensive with the obligation to employ.¹

In another action for seducing the servant of a glass and alkali manufacturer, the agreement between the master and servant was, that the servant should for seven years serve the plaintiff or his partners, or such of them as should carry on the trade or business then carried on by him as a glass and alkali manufacturer, and that the servant should not, during the term, work for any other person ; that the plaintiff should, so long as the servant continued to be employed for him or his partners, pay him twenty-four shillings per week for 1,200 tables ; and the plaintiff agreed to find the workman some other description of work, provided he did

¹ *Pilkington v. Scott*, 15 M. and W. 657.

not require 1,200 tables, so that his wages should not be less than twenty-four shillings per week, except when a furnace should be out, when the servant engaged to work for twenty-one shillings per week. In case the servant should be sick or lame, or otherwise incapacitated to perform, or should not perform the work and service aforesaid and his engagement with the plaintiff, or in case he should not in his opinion have conducted himself properly, or as he ought to do, or if the plaintiff or his partners should discontinue the business during the term of seven years, they should be at liberty to retain any other person in lieu of the servant, and should not be obliged to make any payment. Upon an objection taken to this agreement, it was held to impose on the master an obligation to employ for seven years, provided the trade was carried on so long, and on the servant to serve during the same period; and that he was only restrained from working for others so long as the master was bound to employ and he was bound to serve.¹ And an agreement by which the servant is to work exclusively for the master for twelve months, in consideration of which the master is to pay him every week such wages as the articles made by him amount to, with a proviso for determining the service upon notice, implies an engagement to provide a reasonable quantity of work whilst the relation of master and servant continues.²

An agreement between a collier and a coal company, the collier to serve them in consideration of wages (not specifying the amount) to be paid to him fortnightly, and the company not to dismiss him without twenty-eight days' notice, was held to imply an obligation by the

¹ *Hartley v. Cummings*, 5 C. and B. 247.

² *Regina v. Welch*, 2 E. and B. 357.

employers to find the servant in work, as it would be perfectly illusory to hold otherwise.¹

But if the master merely engages to pay wages to the servant in proportion to the work to be done by him, he does not bind himself to find him work. An agreement was made between the owners of a colliery and some colliers, that the colliers should for a year do such work as might be necessary for carrying on the colliery, and as they should be required to do by the owners; that the owners should pay them wages in proportion to the work done; that during all the times the mines should be laid open, the parties hired should continue the servants of the owners, and when required, except when prevented by sickness, they should perform a full day's work on each and every working day. It was held that the owners were not bound to employ the colliers at work at reasonable times for a reasonable number of working days during the term: it was quite optional with them to set the labourers to work.²

In *Aspdin v. Austin*,³ the plaintiff agreed to manufacture cement for the defendant; the defendant, on condition of the plaintiff performing his agreement, agreed to pay him £4 weekly during two years following the date of the agreement, and £5 weekly during the next year, and also to receive him into partnership at the expiration of three years. The Court of Queen's Bench decided that this agreement did not bind the defendant to employ the plaintiff in manufacturing cement, but merely to pay wages in case the plaintiff did manufacture the cement, or was ready and willing to do so, and was prevented by the defendant. They said, "Where parties have expressly covenanted to perform certain acts, they cannot be held to have im-

¹ *Whittle v. Frankland*, 2 B. and S. 49.

² *Williamson v. Taylor*, 5 Q. B. 175.

³ 5 Q. B. 671.

pliedly covenanted for every act convenient or even necessary for the perfect performance of their express covenants. Where parties have entered into written engagements with express stipulations, it is not desirable to extend them by an implication: the presumption is, that having expressed some, they have expressed all the conditions by which they intend to be bound under the instrument. It is assumed that the defendant, at however great a loss to himself, was bound to continue his business for three years; but the defendant has not covenanted to do so; he has covenanted only to pay weekly sums to the defendant, on condition of his performing what on his part is a condition precedent."

And on the same principle they held, in *Dunn v. Sayles*,¹ that the defendant was not liable for refusing to allow the plaintiff's son to remain in his service, but dismissing him therefrom, the plaintiff having covenanted that his son should serve the defendant for five years in the art of a surgeon-dentist, and should attend nine hours each day; and the defendant having covenanted that he would, during the five years, in case the son should faithfully perform his part of the agreement, but not otherwise, pay him certain weekly sums during the five years.

In *Elderton v. Emmens*, the Exchequer Chamber cited these two cases, and professed not to overrule them. In *Worthington v. Sudlow*,² *Crompton, J.*, said that *Aspdin v. Austin* had been attacked, if not overruled, in the House of Lords. But in *Churchward v. the Queen*,³ *Cockburn, C. J.*, said that he thought the decision right. In this last case *Churchward* covenanted that he would, to satisfaction of the Lords of the Admiralty, convey the mails which they or the Postmaster-General should require; and the Admiralty, in consideration of

¹ 5 Q. B. 685.

² 2 P. and S. 514.

³ L. R. 1 Q. B. 191.

his so doing, covenanted to pay him £18,000 a year out of moneys to be provided by Parliament; and it was held that there was no implied covenant to employ. The Lord Chief Justice saying, "Although a contract may on the face of it appear to be obligatory only upon one party, there are occasions on which you must imply corresponding obligations on the other. When the act to be done by the party binding himself can only be done upon something of a corresponding nature being done by the opposite party, you would then imply a corresponding obligation; as if a man engages to work, and he is only to be paid by the measure of the work, the contract necessarily presupposes, on the party who engages him, an obligation to supply the work."¹ Agreeably to this, it has been held that when a workman had received all the money he was to receive for his services, he could not sue for wrongful dismissal.²

84. If the master who is under an obligation to employ his servant, wrongfully dismisses him from his service before the period for employment has expired, the remedy of the servant is by action for the wrongful dismissal, and not for his wages. He cannot maintain an action for his wages, unless he has actually served all the time for which he claims wages.³ He may maintain an action for wrongful dismissal, directly he has been dismissed; he need not wait until the period for which he has agreed to serve is out.⁴ And if the master refuses to employ the servant before the period agreed for the service has commenced, it is a breach of

¹ L. R. 1 Q. B. 195.

² Rutledge v. Farnham Board of Health, 2 F. and F. 406.

³ Archard v. Horner, 3 C. and P. 319. Smith v. Hayward, 7 A. and E. 544. Fewings v. Tisdal, 1 Ex. 295, overruling Gandell v. Potigny, 4 Camp. 375.

⁴ Paganini v. Gandolfi, 2 C. and P. 371. Dunn v. Murray, 9 B. and C. 780.

contract which entitles the servant to treat the contract at an end, and at once to sue for damages.¹

85. It is also the duty of the master to pay wages in consideration of the service performed. If the relation of master and servant has subsisted, it will, in most cases, be presumed that there was an agreement, or understanding, that the servant should be paid the value of his services, although it does not appear that the parties have agreed to the amount.² But if relations live together, and perform acts of service for each other, the probability is, that such acts are performed by way of kindness or duty, and not for reward. Thus, when an illegitimate daughter had lived in her father's house, and acted as his servant for several years, though when first she came to him he had hired her as a servant for a year, at fifty shillings wages, she was considered not to have been his servant at wages during the subsequent years.³ And where a man who had lived in his brother's house, and assisted him in carrying on his business, afterwards made a claim for his services, it was left to the jury to say, whether the parties came together on the terms that the one was to be paid by the other for his services.⁴ A slave who came to England with his master, and continued with him, was held not entitled to wages from the simple circumstance of service. If an express agreement to pay wages had been made between him and his master, he would have been entitled to wages for his services after the making of such agreement, but not for previous service.⁵ The circumstance of a female servant cohabiting with her master,

¹ *Hochster v. De la Tour*, 2 E. and B. 678.

² *Bayley v. Rimmell*, 1 M. and W. 506.

³ *Rex v. Sow*, 1 B. and Ald. 178.

⁴ *Davies v. Davies*, 9 Car. and Payne, 87.

⁵ *Alfred v. Fitzjames*, 3 Esp. 3.

is material to show that there was no contract of hiring and service, or to pay wages.¹

86. If a person has entered into the service of another, and served him under a special contract which has been rescinded and put an end to by the parties; it will be presumed that the master has agreed to pay the servant for the value of his services. The defendant agreed with the plaintiff's father to take him on trial, and to take him as his apprentice if he approved of him. The plaintiff served him for two years upon this understanding, and the defendant then sent him away, and refused to bind him as an apprentice. The jury finding that the contract was at an end, and that each party had treated it as rescinded, it was held that the plaintiff was entitled to a reasonable remuneration for his services.² On the same principle was decided the case of a clerk who engaged himself for a year, at an annual salary, whose master became bankrupt before any salary was due, and who left shortly after the bankruptcy, his services being no longer required: he was held entitled to a *pro ratâ* salary for the period during which he had served, the contract of service having been dissolved by mutual consent, and it being understood to be on the terms that he should be paid for his services actually rendered.³ When the master gave up business without dismissing the servant, the servant being ready and willing to serve during the agreed period, recovered his salary on the ground of a constructive service.⁴ A superintendent of packets, in the service of a steam packet company, whose salary was payable quarterly, on the 20th October tendered his resignation, which was

¹ Bradshaw v. Haward, Car. and Marsh, 591.

² Phillips v. Jones, 1 A. and E. 333.

³ Thomas v. Williams, 1 A. and E. 685.

⁴ Cook v. Sherwood, 3 F. and F. 729.

accepted on the 13th December, no salary having then become due,—it was held, that although no new contract arises by implication of law upon the dissolution of special contract, in respect of services performed under such special contract previous to its dissolution, yet it ought to have been submitted to the jury, as to whether the parties did or did not, upon the dissolution of the contract, come to a new agreement to pay for the services under it, and for which no wages had become due by the contract.¹ A carman was engaged by some tea-merchants, at the wages of £160 per annum, payable quarterly. At the expiration of the first month of his service, he was guilty of misconduct, for which they dismissed him; but, at their request, he worked for them two days after his dismissal. The jury considered that the dismissal was accompanied by a new contract to pay him a month's wages for the services actually performed, in consideration of his remaining in their service two days after his dismissal.² If the servant is wrongfully dismissed before his salary is due, he may rescind the contract, and recover a *pro ratâ* salary for the time he has served, or he may sue for damages. If he elects to sue for damages, he cannot recover wages.³ But if the servant is properly dismissed for misconduct before his wages are due, he cannot recover anything.⁴ If the contract is for three months' notice or three months' salary, and the servant is dismissed without notice, he is entitled to the salary as liquidated damages.⁵

87. Wages are sometimes payable upon condition. An agreement between master printers and compositors

¹ Lamburn v. Cruden, 2 M. and G. 253.

² Hurcum v. Stericker, 10 M. and W. 553.

³ Goodman v. Pocock, 15 Q. B. 576.

⁴ Lilly v. Elwin, 11 Q. B. 742.

⁵ East Anglian Railway Company v. Lythgoe, 10 C. B. 726.

provided that printing advertisements on wrappers was—"Standing advertisements and stereo blocks forming a complete page, and when collected together making one or more complete pages on a wrapper, not to be charged, the compositor only to charge for his time in making them up; the remainder of the matter in such wrappers, including standing advertisements or stereo blocks not forming a complete page, to be charged according to a scale." It was held by the Courts of Exchequer and Exchequer Chamber, that for every page of the advertising sheet not filled with standing advertisements the compositor was entitled to charge according to the scale; the first branch of the agreement applying to the pages filled with standing advertisements, the second to the others.¹

88. Sometimes it is agreed that the servant shall have a percentage on the profits. Such an agreement does not constitute him a partner, but it may entitle him to a discovery and account of the profits.² He may be entitled to overhaul the books and accounts of the master's business, and to a percentage on the profits from year to year. The Court is bound to see that a *bonâ fide* estimate has been made, and not an estimate made at the mere arbitrary will of the employer.³

If a servant is allowed to occupy his master's house during his service, and as part of his remuneration, he acquires no interest therein, not even to the extent of a tenancy at will; but must quit when dismissed from the service, whether rightly or wrongly, or when required to do so by the master.⁴

¹ Hill v. Levey, 3 H. and N. 7—702.

² Harrington v. Churchward, 6 Jur. N. S. 576.

³ Rishton v. Grissell, L. R. 5 Eq. 326.

⁴ White v. Bayley, 10 C. B. N. S. 227. Lake v. Campbell, 5 L. T. N. S. 582.

89. The value of things lost or injured by the negligence of a servant cannot be deducted from his wages, unless there is an agreement to that effect between the master and servant. If there is such an agreement, it is tantamount to an agreement that the balance of wages only shall be paid, after deducting the value of the things lost or injured.¹ Nor can the master, without an agreement to that effect, deduct money he has paid to a medical man whom he has called in to attend the servant whilst sick.² If the servant has not agreed to pay doctor, or master's reimbursement, the calling doctor in will be an act of generosity by the master.

If the servant is an infant, the master cannot deduct from the wages any payments he may have made for the servant, unless they have been made in the purchase of necessaries. Payments made for the servant do not operate to discharge or satisfy the wages, as do payments made to her after the wages have become due; but they constitute a debt due from the servant to the master, and may be set off against the wages, if the servant is legally liable to repay them, but not otherwise. An infant, as has been stated, is not bound by contracts, unless for necessaries suitable to her degree; and therefore, in the case now put, is not liable to repay the advances. In an action by a servant-of-all-work for wages earned by her when under twenty-one, the master claimed to deduct £1 10s. which he had paid for a silk dress for her, £4 10s. for a reticule and lace for caps; also payment for coach fares. Bayley, J., held that he was not entitled to the deductions, saying, "Payments made on account of wages due to an infant for necessaries, and which could not be avoided, are valid

¹ *Le Noir v. Burton*, 4 Campb. 134. *Cleworth v. Pickford*, 7 M. and W. 314.

² *Sellen v. Norman*, 4 C. and P. 80.

payments ; but an infant cannot bind herself for things which are not necessary.¹

90. On the bankruptcy of the master, or the winding up of a company under the Companies Act, 1862, the wages or salary of a clerk or servant in the employment of the bankrupt or company at the date of the receiving order or commencement of the winding up, not exceeding four months' wages or salary, and not exceeding £50, and wages not exceeding £25 of any labourer or workman in the employment of the bankrupt or company at the same date not exceeding two months' wages, are to be paid in priority of all other debts, *pari passu* with certain rates and taxes. If the property of the bankrupt is insufficient to meet them they are to rebate in equal proportions.² But where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or the commencement of the winding up.

A corresponding provision in a former Act was held to extend to a clerk who had lent money to the bankrupt, and was taken into his service at a salary in consequence of the loan.³ A music-master and a drill-master employed by a school-master are held to be servants within this clause.⁴ Servants are entitled to immediate payment out of the assets in hand, and are not to be postponed because the trustee intends to take proceedings against the debtor which may exhaust them.⁵

¹ Hedgeley v. Holt, 4 Car. and Payne, 104. ² 51 & 52 Vic. c. 62.

³ Ex parte Harris, 1 De Gex, 165, 9 Jur. 497.

⁴ Exp. Walter, L. R. 15 Eq. 412. ⁵ Exp. Powis, L. R. 17 Eq. 130.

On the winding-up of a company a servant has no preferential claim for his wages. He is entitled to prove on the footing of having had notice of discharge when the order to wind up was made.¹

91. A master is not bound to provide his servant with medical attendance or medicines. Although Lord Kenyon held, that in the case of a menial servant who fell sick and was supplied with medicines whilst under the master's roof, the master was liable, on the ground that the servant formed part of his family, and that he was bound, during the period of service, to find him with all necessaries, and, amongst others, medicines and medical advice,² yet this opinion has been overruled. The event of the servant falling sick during the service is an event not contemplated by the parties when the relation is contracted; and it has been remarked, that if masters were bound to provide their servants with necessary medicines and medical advice, many masters who are obliged to employ servants would be unable to perform their engagements. The extent of a master's liability, in the event of the servant's sickness, is to pay him his wages, and provide him with ordinary food.³ On the trial of an indictment against a master for causing the death of his apprentice by neglecting to provide him with proper nourishment, Patteson, J., told the jury, that by the general law, a master was not bound to provide medical advice for a servant; yet that the case was different with respect to an apprentice, and that a master was bound, during the illness of his apprentice, to provide him with proper medicines.⁴

¹ *Re General Rolling Stock Company*, L. R. 1 Eq. 346.

² *Scarman v. Castell*, 1 Esp. 270.

³ *Wennall v. Adney*, 3 B. and P. 241. *Sellen v. Norman*, 4 C. and P. 80. *Cooper v. Phillips*, 4 C. and P. 581.

⁴ *Regina v. William Smith*, 8 C. and P. 153.

It is a misdemeanor at Common Law for a master to neglect to provide necessaries for a servant to the injury of his health, if by contract he is bound to do so, and the servant is of tender years under the master's control, and unable to take care of himself.¹ If the servant is in a helpless state and unable to take care of herself, and the master leaves her with insufficient food or lodging, so as to cause death, it is manslaughter; but if she has the exercise of free will and chooses to stay in a service of such great hardship, and bad food and lodging, that death supervenes, the master is not criminally responsible.² By Stat. 24 & 25 Vict. c. 100, s. 20, it is a misdemeanor punishable by penal servitude for three years, or imprisonment for not exceeding two years, with or without hard labour, for a master or mistress, who is legally bound to provide food, clothing, or lodging for an apprentice or servant, wilfully and without lawful excuse, to refuse or neglect to provide the same, or unlawfully and maliciously to do or cause to be done any bodily harm to the apprentice or servant to the danger of life or permanent injury of health. By 14 & 15 Vict. c. 11, provision is made for the safety of servants under sixteen, hired from workhouses.

92. The relation of master and servant often involves a bailment of the person of the servant to the master. The servant has to trust himself in the master's building, or mine, or ship, or carriage, or scaffold, or in the midst of his machinery, and in doing so frequently carries his life in his hand, and is in peril of losing it if the master's things, amongst which he has to work, are defective or are improperly used. The case is complicated by the circumstances that the servant is in some respects capable of taking care of himself, and

¹ Rex v. Ridley, 2 Campb. 160. ² Reg. v. Smith, 11 Jur. N. S. 695.

sometimes it is part of the duty of his service to take care of the things which put him in peril. The bailment or relation is mutually beneficial, and, in the nature of a hiring, and subject to the above qualification, would seem to impose on the master the duty of taking ordinary care of the servant.

In *Priestley v. Fowler*, which is the first case on this subject, and is said to have introduced a new chapter into the law,¹ and has frequently been referred to as the leading case on the subject,² this principle is apparently recognised. A butcher ordered his servant to go in a van loaded with goods. In consequence of the van being in bad repair, and overloaded, it broke down on the journey, and the servant was injured. It was held that the master was not liable. Lord Abinger, in delivering the judgment of the Court, stated the law to be,—That the mere relation of master and servant could not imply an obligation, on the part of the master, to take more care of the servant than he might be reasonably expected to take of himself;—that he was bound to provide for the safety of the servant, in the course of his employment, to the best of his judgment, information, and belief. The servant was not bound to risk his safety in the service of his master, and might, if he thought fit, decline any service in which he reasonably apprehended injury to himself; and in most cases in which danger might be incurred, if not in all, he was just as likely to be acquainted of the probability and extent of it as his master.³

In a subsequent case, the Court say,—“The master is bound to take due care not to expose his servant to unreasonable risks. The servant, when he engages to run

¹ Per Byles, J., *Clarke v. Holmes*, 7 H. and N. 947.

² *Vose v. Lancashire and Yorkshire Railway Company*, 2 H. and N. 734. *Riley v. Baxendale*, 6 H. and N. 448. *Clarke v. Holmes*, 7 H. and N. 947.

³ *Priestley v. Fowler*, 3 M. and W. 1.

the risks of his service, has a right to understand that the master has taken reasonable care to protect him from such risks by associating with him only persons of ordinary skill and care.”¹

But the same Court, when differently constituted, afterwards held that there was no contract by the master to take due and ordinary care not to expose the servant to extraordinary danger and risk in the course of his employment.² In *Morgan v. Vale of Neath Railway Company*,³ Blackburn, J., on this subject cites with approbation the dictum of Shaw, C. J.,—“The servant does not stand towards the master in the relation of a stranger, but is one whose rights are regulated by contract express or implied.”

In two Scotch appeals to the House of Lords, the law has been administered more favourably for the servant. In each case a miner had been killed by a stone falling on him. In the first the question was whether the rashness of the workman contributed to the accident, and disentitled his family to compensation. He had often complained to the defendant's manager of the stone, and requested him to remove it. The manager said there was no danger, and, after some delay, sent men to remove the stone. They found the deceased filling his hutch with coal under the stone, and waited until he had finished. While the deceased was filling his hutch, the stone fell and killed him. The Judge told the jury that the plaintiff could not recover. The House of Lords held that there was evidence for the jury of the negligence of the defendants, or their manager, for whom they were responsible, in not removing the stone before, and of the miner's death not having been caused by his own extraordinary rashness.

¹ *Hutchinson v. York, Newcastle, and Berwick R. C.*, 5 Ex. 343.

² *Riley v. Baxendale*, 6 H. and N. 445.

³ 5 B. and S. 579.

The Lord Chancellor (Lord Cranworth) said, "The law of Scotland is, and I believe it to be entirely conformable to the law of England also, that where a master is employing a servant in a work, particularly in a work of a dangerous character, he is bound to take all reasonable precautions that there shall be no extraordinary danger incurred by the workman. A case has been put by Mr. Bovill of a rope going down to a mine. I take it that in England, just as in Scotland, if a master of a man negligently puts a rope that is so defective that it will break with the weight of a man, he is responsible to the workman, just as he would be responsible for his negligence to a stranger. I believe by the law of England, just as by the law of Scotland in the actual state of the case with which we have to deal, a master employing servants upon any work, particularly a dangerous work of this sort, is bound to take care that he does not induce them to work under the notion that they are working with good and sufficient tackle, whilst he is employing improper tackle, and being guilty of negligence, his negligence occasioning loss to them."¹ In the other, the workman was killed by a stone falling from the top of the shaft in consequence of the planking being rotten, whilst he was being drawn up from the mine. He was coming up, not at the usual hour, or in course of business, but for the purpose of stating some grievance; on this ground the Court of Session held his widow and family not entitled to compensation. The House of Lords held that he was to be considered as in the employment of the master whilst being drawn out of the mine, though for his own purposes, and that his death being caused by the machinery used in drawing up being in a defective state from neglect, the master was responsible. Lord Cranworth, Chancellor, said, the law of

¹ Patterson v. Wallace, 1 Macqueen, 748.

England was the same in this respect as the law of Scotland.¹

In a subsequent case,² Lord Cranworth said that these cases proceeded on a principle established in many preceding cases, that when a master employs his servant in a work of danger he is bound to exercise due care in order to have his tackle and machinery in a safe and proper condition, so as to protect the servant against unnecessary risks. The master is liable for an accident to the servant if it has been caused by personal negligence on his part, as when a labourer was injured by a fall of a scaffold from its being built of defective put logs, and one of the masters told a labourer who was breaking them to break no more.³ And where one of two masters in partnership acted as banksman to a mine, and was guilty of negligence, the Court held them both liable, saying, "Although the chance of injury from the negligence of fellow-servants may be supposed to enter into the calculations of a servant in undertaking the service, it would be too much to say that the risk of danger, from the negligence of a master when engaged in their common work, enters in like manner into his speculation. From a master he is entitled to expect the care and attention which the superior position and presumable sense of duty of the latter ought to command. The relation of master and servant does not the less subsist because, by some arrangement between the joint masters, one of them takes on himself the functions of a workman."⁴

¹ Marshall v. Stewart, 2 Macqueen, 30.

² Barton Hill Coal Company v. Reid, 3 Macq. 267, and per Byles J., Searle v. Lindsay, 11 C. B. N. S. 439; per Lord Campbell, Ormond v. Holland, E. B. and E. 105.

³ Roberts v. Smith, 2 H. and N. 213. Webb v. Rennie, 4 F. and F. 608.

⁴ Ashworth v. Stanwix, 3 E. and E. 701. Mellors v. Shaw, 1 B. and S. 437.

And if a master induces the servant to engage in a dangerous employment, as to work on a ladder which the master knows to be defective, but the servant does not, or other dangerous employment, he is liable for any injury that ensues to the servant.¹ So it is a breach of contract, if he compels the servant to serve on a service more dangerous than contemplated, as when the crew of a ship were engaged for an ordinary mercantile voyage, and the ship was employed in aid of a belligerent.² If the things of the master on or with which the servant has to work have a latent defect, and by reason thereof inflict injury upon him, the master is not liable unless he knew, or ought to have known, of the defect.³ If the defect or danger is patent, and is or may be known to the servant, the master is not liable.⁴ The knowledge of the servant of the defect is only evidence that he has agreed to encounter the risk. If it appears that he has not, but that the master has agreed to repair it, the master is liable to him for an injury caused by it. When a servant entered into the employment, machinery was properly fenced; on its ceasing to be so, the manager of the works, on the remonstrance of the servant, promised, in the presence of the master, it should be made good. It was therefore certain that at the time when the contract was entered into, it was contemplated

¹ *Williams v. Clough*, 3 H. and N. 258. *Ogden v. Rummens*, 3 F. and F. 751. *Davies v. England*, 10 Jur. N. S. 1235. *Watling v. Oastler*, L. R. 6 Ex. 73.

² *Burton v. Pinkerton*, L. R. 2 Ex. 340.

³ *Priestley v. Fowler*, 3 M. and W. 1. *Mellors v. Shaw*, 1 B. and S. 441, 443. *Couch v. Steel*, 3 E. and B. 402. *Ormond v. Holland*, E. B. and E. 102. *Potts v. Port Carlisle Company*, 2 L. T. N. S. 283. *Moffatt v. Bateman*, L. R. 3 P. C. 115.

⁴ *Seymour v. Maddox*, 16 Q. B. 326. *Skipp v. Eastern Counties Railway Company*, 9 Ex. 223. *Assop v. Yates*, 2 H. and N. 768. *Griffiths v. Gidlow*, 3 H. and N. 648. *Smith v. Dowell*, 2 F. and F. 238.

that the machinery should be fenced. Through the negligence of the master in not having the machinery fenced, the servant was exposed to danger to which he ought not to have been subjected, and the injury of which he complained having thus arisen, the master was justly and properly liable.¹

93. The principle enunciated in *Priestley v. Fowler* being that the master is not liable to his servant for the consequences of the negligence of others, it has been held that he is not liable to his servant for an injury caused by the negligence of his fellow-servant. The servant of a railway company, while proceeding in a train, was killed by a collision of trains caused by the negligence of other servants of the company having charge of the train. The Court put the case of a master employing A. and B., two of his servants, to drive his cattle to market. If, by the unskilfulness of A., a stranger is injured, the master is responsible; not so if A., by his unskilfulness, hurts himself. Suppose, then, by the unskilfulness of A., B., the other servant, is injured while they are jointly engaged in the same service, then we think he has no claim against the master. They have both engaged in a common service, the duties of which impose a certain risk on each of them, and in case of negligence on the part of the other, the party injured knows that the negligence is that of his fellow-servant, and not of his master. He knows, when he engages in the service, that he is exposed to the risk of injury, not only from his own want of skill and care, but also from the want of it on the part of his fellow-servant; he must be supposed to have contracted as between himself and his master

¹ *Clarke v. Holmes*, 7 H. and N. 937; 6 H. and N. 349. *Gallagher v. Piper*, 16 C. B. N. S. 692. *Murphy v. Smith*, 19 C. B. N. S. 365. *Holmes v. Worthington*, 2 F. and F. 533. *Watling v. Oastler*, L. R. 6 Ex. 73.

that he would run this risk. But he has a right to understand that the master has taken ordinary care to protect him from such risks, by associating him only with persons with ordinary skill and care.¹

On the same principle the following actions have failed. The widow of a bricklayer sued for his loss. He was killed by a fall of a scaffold, on which he was at work. It was constructed by men employed by the defendant, and they used an unsound leger-pole, which was the occasion of the fall. The defect in the pole had previously been pointed out to the foreman, but there was no evidence that he was an improper person to employ as foreman.² A painter was injured by the fall of a scaffold which was insecurely erected by a person employed by the master. The person so employed was incompetent, but it was not shown that the master knew of his incompetency, or had been guilty of any want of care in his selection.³

A bricklayer, in the employ of builders, was injured by a defective ladder. The workmen had complained of it among themselves, but their complaints had not been communicated to the masters. It was the duty of the gate-keeper to examine all implements used in the works. The masters were held not liable, there being no evidence of personal negligence, either by interference in the work, or by hiring servants, or in choosing implements.⁴

A workman in a mine was killed, while being raised to the surface, through the negligence of the engineman. The workman and engineman were held by the House of Lords, on an appeal from Scotland, to be

¹ *Hutchinson v. York, Newcastle, and Berwick Railway Company*, 5 Ex. 343.

² *Wigmore v. Jay*, 5 Ex. 354. ³ *Tarrant v. Webb*, 18 C. B. 797.

⁴ *Ormond v. Holland*, E. B. and E. 102.

fellow-servants engaged in a common employment.¹ A tub of water fell upon a workman employed in sinking a pit, because his fellow-workman neglected to use a jiddy provided by the master. The plaintiff had complained, in the presence of the defendant, that the jiddy was not used. Byles, J., directed the jury that they might find for the plaintiff if they thought that the omission to use the jiddy existed by the defendant's order, or with his sanction. The Court overruled this, saying that it was enough for the defendant to find the jiddy, and he was not bound to see it used.² An engineer on a steam-vessel was injured by a defective winch, which the chief engineer, who was a competent man, had neglected to have repaired. Williams, J., said that, to take the case out of the common rule, there must be reasonable evidence to show that the masters were to blame either in respect of their not having provided proper machinery, or not having retained competent workmen.³ The guard of a railway train was killed by the train running off the line through the negligence of the ganger of plate-layers, whose duty it was to keep the rails in order. They were held to be fellow-servants, because they were engaged in a common object, viz., that passengers shall be conveyed in trains that were safe on rails which were free from danger.⁴ A labourer was injured by a fall from a scaffold, owing to its faulty construction, through the negligence of the general manager of the master's works. He had been their general manager for about twenty-five years. The manager and the labourer were held by the majority of the Common Pleas to be

¹ Bartonshill Coal Company v. Reid, 3 Macq. 266.

² Griffith v. Gidlow, 3 H. and N. 648.

³ Searle v. Lindsay, 11 C. B. N. S. 429.

⁴ Waller v. South-Eastern Railway Company, 2 H. and C. 102. Lovegrove v. London and Brighton Railway Company, 16 C. B. N. S. 669.

fellow-servants. Williams, J., entertained a doubt as to whether he was not rather a deputy-master, intended to stand in the place of the defendants, than a fellow-workman; but thought there was not sufficient evidence. Byles, J., held that he was general agent for the defendants, and that they were liable.¹ A carpenter, employed by a railway company to mend the roof of a shed, was thrown from a ladder by the negligence of the porters of the company in moving an engine. He and the porters were held to be fellow-servants engaged in a common employment, within the rule. Blackburn, J., in whose judgment Mellor, J., concurred, said, "A servant who engages for the performance of services for compensation does, as an implied part of the contract, take upon himself, as between himself and his master, the natural risks and perils incident to the performance of such services, the presumption of law being that the compensation was adjusted accordingly; or, in other words, that those risks are considered in his wages." "If the master has, by his own personal negligence or malfeasance, enhanced the risk to which the servant is exposed beyond those natural risks of the employment, which must be presumed to have been in contemplation when the employment was accepted, as, for instance, by knowingly employing incompetent servants, or supplying defective machinery, or the like, no defence founded on this principle can apply." "I quite agree that the employment must be common in this sense, that the safety of the one servant must, in the ordinary and natural course of things, depend on the care and skill of the other."² The judgment was affirmed in Error,³ Erle, C. J., observing that the principle was put very clearly by Blackburn, J., in his

¹ Gallagher v. Piper, 16 C. B. N. S. 669.

² Morgan v. Vale of Neath Railway Company, 5 B. and S. 570.

³ 5 B. and S. 736.

judgment; and Pollock, C. B., adding that, by a decision in favour of the plaintiff, they would open a flood of litigation, the end of which no one could foresee. A labourer in a mine, under twenty-one years, was injured by the fall of a stone, which the overlooker neglected and refused to prop up, although the danger was pointed out to him by the plaintiff, but threatened to dismiss him unless he went on with his work. The Exchequer Chamber held that the young labourer and the overlooker were fellow-servants, and that he was not a deputy-master for whose negligence the mine-owners were responsible.¹ A boy of sixteen was employed in a lucifer-match factory. Simlack was the general manager, and engaged him; under him was Debor, who took his place when absent. The boy was set to stir a dangerous compound by Debor, and injured by an explosion. The Court held that he and Debor were fellow-servants, Erle, C. J., saying that there was evidence that Simlack was placed by the defendant in the position of vice-principal, but not that Debor was.² Where the master retained the control of the establishment, and employed a manager or foreman, the manager or foreman was held to be a servant, and not the master's representative.³

The same principle has been applied to exempt from liability a contractor who employed a sub-contractor to do part of his work, and did the other part by his own servants—for the death of a servant of the sub-contractor, caused by one of the contractor's servants letting something fall upon his head. The sub-contractor's servant was considered as in the same position as a servant of the contractor, and engaging to run the

¹ Hall v. Johnson, 3 H. and C. 589.

² Murphy v. Smith, 19 C. B. N. S. 361.

³ Feltham v. England, L. R., 2 Q. B. 33.

risk of accidents caused by the negligence of those associated with him in a common employment.¹

A person who volunteers to associate himself with the servants, and assist them in their work, is in no better position than a servant, and cannot, therefore, sue the master for an injury sustained by the negligence of the servants.²

It makes no difference as to the liability of the master that the negligence of the servant for which he is sued was committed before the servant injured was in his employ. It is not negligence for which he is liable. All that he is bound to do, in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so, and furnish them with adequate resources for the work.³

It was a term of the employment of a labourer employed by a railway company that he should be carried by train to and from his work. He was, while returning from his work by train, in the service of the company, and they were, therefore, not liable to him for the negligence of the guard who had the management of the train.⁴ Where a master conveyed his servant to his work in his buggy, not as one of the terms of his employment, he was held to have contracted for no greater degree of care and skill than would be required from a person who was driving another gratuitously, and liable only for negligence of a gross description.⁵

On the other hand, in *Ainsworth v. South-Eastern*

¹ *Wiggett v. Fox*, 11 Ex. 832; 5 H. and N. 147. *Normile v. Braby*, 4 F. and F. 962.

² *Degg v. Midland Railway Company*, 1 H. and N. 773. *Potter v. Faulkner*, 1 B. and S. 800.

³ *Wilson v. Merry*, L. R. 1 Sc. 326. *Brown v. Accrington Cotton Company*, 3 H. and C. 511.

⁴ *Tunney v. Midland Railway Company*, L. R. 1 C. P. 291.

⁵ *Mollatt v. Bateman*, L. R. 3 P. C. 115.

Railway Company,¹ tried before Lord Wensleydale in 1847, ten years after *Priestley v. Fowler*, and three years before *Hutchinson v. York, Newcastle, and Berwick Railway Company*, an action brought by the executrix of a labourer, employed by the company to remove chalk, while being carried to his work in their trucks, through the negligence of the engine-driver, the plaintiff recovered, the Judge leaving it to the jury to say whether negligence—that is, want of reasonable care in the company or their servants—was made out. The point that the engine-driver and the labourer were fellow-servants was not raised either by the counsel for the defendants (*Channel, Serjt., Shee, Serjt., and Bodkin*) or the Judge.

Where a collier was killed while being lowered into the mine through the breaking of a rope, the owner of the colliery superintended the working of it, and allowed a rule made under the statute for its regulation, which required the rope to be tested every morning, to be entirely neglected, and kept in his employment a banksman who he knew habitually disregarded the rule, the Court held that he was guilty of most culpable negligence, and would have been responsible for the death of the servant had there not been contributory negligence on his part.² Where a girl under sixteen entered into the employment of rope manufacturers, and was set to work at a machine consisting of revolving rollers worked by steam-power, of which she had had no experience, and while doing as she was bid by the foreman got her hand caught, and lost her arm, *Cockburn, C. J.*, directed the jury that the foreman was put by the defendants in their place to employ the plaintiff, and they were responsible for his negligence, and that there was evidence both of

¹ 11 Jur. 758.

² *Senior v. Ward*, 1 E. and E. 385.

negative and positive negligence on his part—negative in not giving her proper instructions, and positive in directing her to do the act which caused the accident.¹ A railway company employed a person of an inferior grade, who had been a mere ganger or foreman of navvies, to pull down a bridge, a work which required care and skill. Crompton, J., held that there was some evidence, though slight, of negligence on their part in the employment of an incompetent servant; but the evidence being met by proof that the man was of competent skill, the plaintiff, who sued for the loss of her husband who was killed through the negligence of the ganger, failed.²

If the servant in the course of his employment is brought into contact, or has to work with, the servants of another, not the master of his master, and is injured by their negligence, he has an action against the master of the negligent servants, as in the case of two railway companies owning a station in common, and the servant of one company being run over by the engine of the other;³ or where the plaintiff is acting for his master in receiving goods from a warehouse, and the defendant's servants are engaged in delivering and negligently let them fall on the plaintiff.⁴

The true principle which should prevail on this subject would seem to be indicated by Lord Abinger in *Priestley v. Fowler*, that the master is bound to take the same degree of care of his servant as he can reasonably be expected to do of himself. If a chattel

¹ *Grizzle v. Frost*, 3 F. and F. 622.

² *Edwards v. London and Brighton Railway Company*, 4 F. and F. 530.

³ *Vose v. Lancashire and Yorkshire Railway Company*, 2 H. and N. 728. *Warburton v. Great Western Railway Company*, L. R., 2 Ex. 30.

⁴ *Abrahams v. Reynolds*, 5 H. and N. 143. See also *Fletcher v. Peto*, 3 F. and F. 368; *Murray v. Currie* L. R. 6 C. P. 24.

is let to hire to a man, the hirer is bound to the utmost care, such as the most diligent father of a family uses,¹ explained to mean ordinary diligence.² It may be doubted whether the principle has been correctly carried out, and whether the master ought not to be responsible to the servant.

If a horse is hired and injured by the defective carriage or the carelessness of the servant of the hirer, the hirer is liable. In countries where slavery was an institution (the Roman Empire and the Southern States of America), on the bailment of a slave the law was the same as on the bailment of a horse; why should it be different in the case of a man who owns himself and lets himself out to hire? It may be doubted, therefore, whether the principle enunciated by Lord Abinger was not departed from in his decision; and such departure has not been increased by the subsequent decisions, whether the master ought not to be responsible to the servant for the defects in all those instruments, human or mechanical, with which he carries on his business, from the use of which he derives the profit, which are under his control, and with which the servant is brought into contact for the master's benefit, and for which defects the master has, or can have if he pleases, a remedy for all ill-consequences to himself. The reasons given for limiting the liability of the master to the consequences of his personal negligence, viz., that the servant knows of the perils of the service and incurs them with his eyes open, and that he agrees to incur them in consideration of his wages, do not agree with fact. The first proves too much. The servant's knowledge is the same of the perils he incurs from the master's personal negligence, and from the defects of his instruments. An officer of Engineers,

¹ *Coggs v. Bernard*, 2 Ld. Ray, 916.

² *Jones*, 86, 7, 120; 1 *Smith*, L. C. 169.

holding an appointment from the Board of Trade, and travelling as a passenger by express train, is more aware of the perils of his journey than a country boy, employed to clean the lamps or shift the carriages, of the danger of his work.

As to the agreement to encounter the risk in consideration of his wages, it may be fairly argued that the wages a servant receives is a mere compensation for the wear and tear of his bones and muscles, and not more than sufficient to find him in the necessities of life. Very few, if any, are able to lay by anything, or to pay for the education of their children; when their health fails, they are too often the recipients of charity. The employers frequently leave millions behind them.

To suppose that a workman bargains for, or that a master would give, in addition to compensation for services, sufficient to enable the servant to pay the premiums on an accident insurance, is an instance of the power of imagination. The servants who are injured by defective machinery and negligence of other servants are the youngest, the most ignorant, whose wages are the lowest. The number of actions which have been brought for these causes are so many protests against the doctrine—declarations by those who know best that the supposition on which it is grounded is not fact; men will not be torn to pieces by machinery without complaining.

[See Employers' Liability Act, 1880 (43 & 44 Vic. c. 42), in Appendix. This Act throws upon the employer the onus of disproving his liability for personal injury inflicted upon a servant by reason of the act or omission of a fellow-servant: otherwise the master is liable for compensation not exceeding the aggregate earnings of three previous years.]

94. By the Factory Act, several provisions are made

for the protection of persons engaged in factories ; amongst others it is enacted, that every hoist or teagle, and every fly-wheel directly connected with the steam, or water, or other mechanical power, whether in the engine-house or not, and every part of a steam-engine and water-wheel shall be securely fenced, and every wheel-race not otherwise secured shall be securely fenced close to the edge of the wheel-race, and all dangerous parts of the machinery, and every part of the mill-gearing shall either be securely fenced or be in such position, or of such construction, as to be equally safe to every person employed in the factory as it would be if it were securely fenced.¹ All fencing has to be constantly maintained in an efficient state while the parts required to be fenced are in motion, or are being used for the purpose of any manufacturing process.²

On this, it has been held that if a person has been injured for want of the fencing required by the Act, he may sue the occupiers of the factory for damages.³ That it only requires the machinery to be fenced whilst in motion for a manufacturing process.⁴ That a vertical shaft which was not being used for any manufacturing process, and was situate in a room in which no such process was being carried on, need not be fenced, although in motion by the steam power of the factory which was working other shafts in other parts of the factory.⁵ That it is the duty of the mill-owner towards all persons to fence his machinery other than mill gearing, and not merely towards young persons and children.⁶ That all parts of the machinery should be fenced, and not merely those which are so near the floor as to be

¹ See 54 & 55 Vic. c. 75, and 41 Vic. c. 16.

² 41 Vic. c. 16 ; see also 54 & 55 Vic. c. 75.

³ *Caswell v. Worth*, 5 E. and B. 849.

⁴ *Coe v. Platt*, 6 Ex. 752 ; 7 Ex. 460. ⁵ *Coe v. Platt*, 8 Ex. 923.

⁶ *Coe v. Platt*, 6 Ex. 752. *Britton v. Great Western Cotton Company*, L. R. 7 Ex. 130.

dangerous,¹ and that the mill-owner is not liable to a person injured by the unfenced machinery, if his own negligence contributes to his injury.²

95. The master is not bound to give the servant a character.³ If, in giving the servant a character, he states anything prejudicial to the servant, he is not liable, unless his statement is not only false, but malicious. In giving a character he is bound to state that which he really believes to be true; and the presumption is that he has done so.⁴

96. If a person falsely personates a master, and gives a false character to a person offering himself for a servant,—or if a person offers himself as a servant with a false character, he is liable to a penalty of £20, and, on default of payment, may be committed to prison for a term not exceeding three months nor less than one month.⁵

97. The ordinary remedy for a breach of contract by action at law for damages, is in most cases practically inapplicable to disputes between master and servant; the servant being too poor to pursue it against the master, and incapable of paying the expenses, if used against him. The Legislature has therefore provided cheap and summary remedies and modes of proceedings, as well for as against servants, in several cases. By these statutes the servant, without the necessity of taking any formal proceedings, or employing a lawyer, may have the master summoned before a Magistrate, if he does not pay his wages, and may recover the wages due; and may also, in some cases, be discharged from the contract to serve. Many breaches of contract, and acts of misconduct, on the part of servants, are treated

¹ *Dodd v. Shephard*, 5 E. and B. 857.

² *Caswell v. Worth*, 5 E. and B. 849. ³ *Carrol v. Bird*, 3 Esp. 201.

⁴ *Edmondson v. Stephenson*, B. N. P. 8. *Rogers v. Clifton*, 3 B. and P. 587. *Gardner v. Slade*, 13 Q. B. 796.

⁵ 32 Geo. III. c. 56.

as crimes, and punishable summarily with more or less severity,—especially the embezzlement of the master's property intrusted to the servant to be worked upon, which differs in nothing from theft.

Other statutes provide for the settlement, by arbitration, of disputes between masters and their workmen, in particular manufactures, relating either to the amount of wages to be paid, or the quality of the work done. The arbitrators are to be either a magistrate or a master and a workman of the trade concerning which the dispute arises, chosen in a manner calculated to secure their impartiality.

As it would exceed the limits of this work to set out the statutes relating to disputes between masters and servants at length, such an abstract of their contents is given as shows the particular persons and cases to which they apply, and the punishments which may be inflicted.

By 20 Geo. II. c. 19, complaints, differences, and disputes between masters or mistresses and servants in husbandry hired for one year or longer, or artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time, or in any other manner, may be heard and determined by one or more Justice or Justices of the Peace of the county, riding, city, liberty, town corporate, or place where the master or mistress inhabits. The Justice may order the payment of so much wages to the servant as seems just, provided the sum in question does not exceed £10 with regard to any servant in husbandry, nor £5 with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer. If not paid within twenty-one days, it may be levied by distress and sale of the master's goods. In case of any

misdemeanor, miscarriage, or misbehaviour of the servant in his service, the Justice may commit the offender to the House of Correction, there to remain and be corrected and held to hard labour for a reasonable time, not exceeding one calendar month, or may abate part of the wages, or may discharge the servant. In case of misuse, refusal of necessary provision, cruelty, or other ill-treatment by the master of the servant, the Justice may discharge the servant. From the decision of the Justice, except in the case of a commitment, there is an appeal to the Quarter Sessions.

By 27 Geo. II. c. 6, the provisions of 20 Geo. II. c. 19 are extended to tanners and miners employed in the stannaries in the counties of Devon and Cornwall.

By 31 Geo. II. c. 11, the provisions are extended to servants in husbandry, though hired for a less time than a year.

By 6 Geo. III. c. 25, if any artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, contracts with any person, for any time or times, and absents himself from his service before the term of his contract is completed, or is guilty of any other misdemeanor, a Justice of the county or place where the artificer is found, may, on the complaint of the employer, his steward, or agent, grant his warrant for the apprehension of the servant, and may, after hearing the case, commit him to the House of Correction for a term not exceeding three months nor less than one month. This provision as to punishment is in effect repealed by 4 Geo. IV. c. 34.¹

By 4 Geo. IV. c. 34, if any servant in husbandry, artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, contracts with any person or persons to serve

¹ R. v. Youle, 6 H. and N. 753.

him, her, or them, for any time or times, or in any other manner, and does not enter into or commence the service according to the contract (the contract being in writing and signed by the contracting parties), or, having entered into the service,¹ absents himself from the service before the term of the contract, whether it be in writing or not, is completed, or neglects to fulfil the same, or is guilty of any other misconduct or misdemeanor in the execution of the contract or otherwise respecting the same, a Justice of the county or place where the servant contracted, or was employed, or is found, may issue his warrant to apprehend the servant, and, after examination, may commit him to the House of Correction, there to remain and be held to hard labour for a time not exceeding three months, and abate a proportional part of his wages for the period of his imprisonment, or may punish the offender by abating the whole or part of his wages, or may discharge him from his service.

If the master resides at a considerable distance from the parish or place where his business is carried on, or is absent for a long period of time, either beyond the seas or at a considerable distance from the place of his business, and intrusts his business to the management and superintendence of a steward, agent, bailiff, foreman or manager, a Justice of the county or place where the servant is employed may summon the steward, &c., to answer the complaint of the servant touching the non-payment of his wages, and may make an order on the steward for the payment of the wages due, provided the sum in question does not exceed £10. If not paid within twenty-one days, the amount may be levied by distress and sale of the goods of the master.

¹ *Rex v. Lewis*, 1 Dowl. and L. 822. *Lindsay v. Leigh*, 11 Q. B. 455, and *Askew's Case*, 2 L. M. and P. 429.

The Justice may order payment of wages to any persons named in the Acts 20 Geo. II. c. 19, and 31 Geo. II. c. 11, within such period as he shall think proper; and in case of non-payment the same may be levied out of the goods of the master. The order of the Justice under 4 Geo. IV. c. 34, is final and conclusive.¹ If there is no evidence of the relation of master and servant, the decision of the magistrate may be impeached, but not if there is evidence both ways.²

By 10 Geo. IV. c. 52, the provisions of 4 Geo. IV. c. 34 are extended to persons hired or employed to make felt or hat, or to prepare or work up woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any manufacture made up of wool, fur, hemp, flax, cotton, mohair, or silk, or any of those materials mixed one with another, and to journey-men dyers, and to servants and apprentices employed in the dyeing of felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials. By the Master and Servant Act, 1867,³ which applies only to contracts of service within the meaning of the above, and some other Acts mentioned in its schedule, the following provisions are substituted for such of the enactments of the former Acts as would have applied if the Act of 1867 had not passed.⁴

“Wherever the employer or employed shall neglect or refuse to fulfil any contract of service, or the employed shall neglect or refuse to enter or commence his service according to the contract, or shall absent himself from his service, or wherever any question, difference, or dispute shall arise as to the rights or liabilities of either of the parties, or touching any misuse, misdemeanor, misconduct, ill-treatment, or injury to

¹ Reg. v. Bedwell, 4 E. and B. 213. ² Re Bailey, 3 E. and B. 607.

³ 30 & 31 Vict. c. 141.

⁴ S. 3.

the person or property of either of the parties under any contract of service, the party feeling aggrieved may lay an information or complaint in writing before a Justice, or Magistrate, setting forth the grounds of complaint, and the amount of compensation, damage, or other remedy claimed for the breach or non-performance of such contract, or for any such misuse, misdemeanor, misconduct, ill-treatment, or injury to the person or property of the party so complaining; and upon such information or complaint being laid, the Justice, or Magistrate shall issue or cause to be issued a summons or citation to the party so complained against, setting out the grounds of complaint, and the amount claimed for compensation, damage, or other remedy, as set forth in the said information or complaint, and requiring such party to appear, at the time and place therein appointed, before two Justices or before a Magistrate, to answer the matter of the information or complaint, so that the same may be then and there heard and determined.”¹

After provisions for serving the summons and securing appearance, it enacts that “upon the hearing of any information or complaint under the provisions of this Act two Justices, or the Magistrate, after due examination, and upon the proof and establishment of the matter of such information or complaint, by an order in writing under their respective hands, in their or his discretion, as the justice of the case requires, either shall make an abatement of the whole or part of any wages then already due to the employed, or else shall direct the fulfilment of the contract of service, with a direction to the party complained against to find forthwith good and sufficient security, by recognizance or bond, with or without sureties, to the satisfaction of a

Justice or Magistrate, for the fulfilment of such contract, or else shall annul the contract, discharging the parties from the same, and apportioning the amount of wages due up to the completed period of such contract, or else where no amount of compensation or damage can be assessed, or where pecuniary compensation will not in the opinion of the Justices or Magistrate, meet the circumstances of the case, shall impose a fine upon the party complained against, not exceeding in amount the sum of twenty pounds, or else shall assess and determine the amount of compensation or damage, together with the costs, to be made to the party complaining, inclusive of the amount of any wages abated, and direct the same to be paid accordingly; and if the order shall direct the fulfilment of the contract, and direct the party complained against to find good and sufficient security as aforesaid, and the party complained against neglect or refuse to comply with such order, a Justice or Magistrate may, if he shall think fit, by warrant under his hand, commit such party to the common gaol or house of correction within his jurisdiction, there to be confined and kept until he shall so find security, but nevertheless so that the term of imprisonment, whether under one or several successive committals, shall not exceed in the whole the period of three months: provided always, that the two Justices or Magistrate may, if they or he think fit, assess and determine the amount of compensation or damage to be paid to the party complaining, and direct the same to be paid, whether the contract is ordered by them or him to be annulled or not, or, in addition to the annulling of the contract of service and discharge of the parties from the same, may, if they or he think fit, impose the fine as hereinbefore authorised, but they or he shall not under the powers of this Act be authorised

to annul, nor shall any provisions of this Act have the effect of annulling, any indenture or contract of apprenticeship that they or he might not have annulled or that would not have been annulled if this Act had not been passed.¹

Where it is alleged by any party to a contract of service that the condition of a recognizance or bond entered into or given for the fulfilment of the contract under the provisions of this Act has not been performed, two Justices or a Magistrate, being satisfied thereof, after hearing the parties and the sureties (if any), or in the absence of any party or surety not appearing after summons or citation in that behalf, may order that the recognizance or bond be enforced for the whole or part of the sum thereby secured, as to the Justices or Magistrate seems fit; and the sum for which the same is so ordered to be enforced shall be recoverable accordingly in a summary manner under the Acts described in the second schedule to this Act.²

Where on the hearing of an information or complaint under this Act an order is made for the payment of money, and the same is not paid as directed, the same shall be recovered by distress of the goods and chattels of the party failing to pay, and in default thereof by imprisonment of such party, according and subject to the Acts below;³ but no such imprisonment shall be for more than three months, or be with hard labour.⁴

From and after the expiration of the term of any such imprisonment as aforesaid, the amount of fine, compensation, or damages, together with the costs, so assessed and directed to be paid by any such order as aforesaid, shall be deemed and considered as liquidated

¹ S. 9. ² S. 10. ³ 11 & 12 Vict. c. 43; 28 & 29 Vict. c. 127.

⁴ 30 & 31 Vict. c. 141, s. 11.

and discharged, and such order shall be annulled accordingly, and the said parties exonerated from their respective obligations under the same: provided always, that no wages or any portion thereof which may be accruing due to the employed under any contract of service after the date of such order shall be assessed to the amount of compensation or damages and costs directed to be paid by him under any such order or warrant of distress, or be seizable or arrestable under the same.¹

Where Justices or a Magistrate impose any fine or enforce any sum secured by a recognizance or bond under this Act, they or he may, if they or he think fit, direct that a part, not exceeding one-half, of such fine or sum, when recovered, be applied to compensate an employer or employed for any wrong or damage sustained by him by reason of the act or thing in respect of which the fine was imposed, or by reason of the nonfulfilment of the contract of service.²

Where on the hearing of an information or complaint under this Act it appears to the Justices or Magistrate that any injury inflicted on the person or property of the party complaining, or the misconduct, misdemeanor, or ill-treatment complained of, has been of an aggravated character, and that such injury, misconduct, misdemeanor, or ill-treatment has not arisen or been committed in the *bonâ fide* exercise of a legal right existing, or *bonâ fide* and reasonably supposed to exist, and further, that any pecuniary compensation or other remedy by this Act provided will not meet the circumstances of the case, then the Justices or Magistrate may, by warrant, commit the party complained against to the common gaol or house of correction within their or his jurisdiction, there to be (in the dis-

¹ S. 12.

² S. 13.

cretion of the Justices or Magistrate) imprisoned, with or without hard labour, for any term not exceeding three months.¹

Any party convicted by two Justices or the Magistrate under the provisions of the last preceding section may appeal against the conviction upon finding good and sufficient security, by recognizance or bond, with or without sureties, to the satisfaction of a Justice or Magistrate, to prosecute the said appeal at the next general court of quarter sessions of the peace, to be holden in and for the county or place wherein such conviction shall have been made, and to abide the result of the said appeal according to the usual procedure of such Court, and to pay such costs as that Court may direct, which costs that Court is hereby empowered to award.²

No wages shall become payable to or recoverable by any party for or during the term of his imprisonment under any warrant of committal under this Act.³

Nothing in the Act is to prevent employer or employed from enforcing their respective civil rights and remedies for any breach or non-performance of the contract of service by any action or suit in the ordinary courts of law or equity in any case where proceedings are not instituted under this Act; nor shall anything in this Act affect the provisions of the Act of the fifth year of King George IV., c. 96:

Nor to interfere with the usual and accustomed mode of procedure in any Court of criminal judicature for the trial of indictable offences relating to wilful and malicious injuries to persons or property committed by masters, workmen, servants, or others, either at common law or under the several statutes made and now in force

¹ S. 14.

² S. 15.

³ S. 17.

for the punishment of such offences, but so that no person be twice prosecuted for the same offence.¹

Except as in this Act expressly otherwise provided, every order or determination of a Justice, Justices, or a Magistrate, shall be final and conclusive, notwithstanding anything in any of the enactments described in the first schedule to this Act.²

The word "employer" includes any person, firm, corporation, or company who has entered into a contract of service with any servant, workman, artificer, labourer, apprentice, or other person, and the steward, agent, bailiff, foreman, manager, or factor of such person, firm, corporation, or company :

The word "employed" any servant, workman, artificer, labourer, apprentice, or other person, whether under the age of twenty-one years or above that age, who has entered into a contract of service with any employer :

The words "contract of service" any contract, whether in writing or by parol, to serve for any period of time, or to execute any work, and any indenture or contract of apprenticeship, whether such contract or indenture has been or is made or executed before or after the passing of this Act :

The word "magistrate" means in England, except in the City of London, a stipendiary Magistrate, and in the City of London means the Lord Mayor or an Alderman, sitting at the Mansion House or at the Guildhall :

The word "Justice" means Justice of the Peace :

The words "Two Justices" mean two or more Justices assembled and acting together :

The words "Justice," "Two Justices," "Magistrate," respectively mean a Justice, two Justices, a Magistrate,

¹ S. 19.

² S. 22.

having jurisdiction in the county or place where any contract of service is according to the terms thereof to be executed, or where the party against whom any information, complaint, or proceeding is to be laid or taken under this Act happens to be.¹

98. The statute 20 Geo. II. c. 19 extends to every description of labourer, whether employed for a certain time or to do certain work. A man was employed to dig a well, for which he was to receive two shillings a foot; he was at liberty to employ whom he pleased to assist him. It was held that he was a labourer within the statute, and that Justices had jurisdiction to order the payment of his wages. Lord Ellenborough distinguished between his case and that of a journeyman employed in an art, trade, or mystery, or other workman employed in a branch of it. The labourer appears to have been bound to devote his whole time to the work until it was finished.²

And a person employed by a calico-printer as a designer to make drawings of the patterns which are engraved on the printing rollers, and subsequently transferred in colours to the fabric itself, is an artificer within the statute 4 Geo. IV. c. 34, or if not an artificer, he may be included within the term "other persons." He is the person who sets the whole in motion, and contributes in a most material degree to the calico-printing manufacture, and may be punished by a Magistrate for a breach of his contract to serve.³

An agreement between a shipbuilder and six skilled handicraftsmen to plank a vessel at £5 a ton, and whereby they agreed to exclusively serve him and to

¹ S. 2.

² *Lowther v. the Earl of Radnor*, 8 East, 113. *Ex parte Gordon*, 1 Jur. N. S. 683.

³ *Ex parte Ormrod*, 1 D. and L. 825.

employ assistants, is within the statute 4 Geo. IV. c. 34. The words of the statute embrace all contracts for services by handicraftsmen, either for time or in any other manner. The party must be in the exclusive service of the employer, either for a given time or until the completion of work; but whether hired by the day or the quantity of work done is immaterial.¹ With respect to the payment of wages earned the Magistrate has jurisdiction, though the contract is not for any certain time.²

Workmen agreed to serve a potter for wages by time, and he made a sub-agreement with another to pay him according to the quantity of work and he pay the workmen their wages. The workmen were held to be servants of the potter.³ When the service has not commenced, it seems that the contract must be in writing to give the Magistrate jurisdiction. Such contract may be inferred from several writings referring one to the other.⁴

A person employed by an attorney to take care of goods which had been seized under a writ of execution was held not to be a labourer within the statute. The Court held the term "labourer" confined to those labourers the rate of whose wages Justices were empowered to fix by the statute 5 Eliz. c. 4, and that the Legislature had principally in view out-door and country labour; and that the party in that case was not within the statute, because he was employed and paid for the exercise of care and fidelity, and not for manual labour.⁵

¹ *Lawrence v. Todd*, 14 C. B. N. S. 554.

² *Taylor v. Carr*, 2 B. and S. 334.

³ *Willett v. Boote*, 6 H. and N. 26.

⁴ *Crane v. Powell*, L. R. 4 C. P. 123.

⁵ *Branwell v. Penneck*, 7 B. and C. 536.

Under the 4th Geo. IV. c. 34, the relation of master and servant must exist to authorise the Magistrate to interfere. If the contract is to do certain work, by which the workman is not bound to devote his whole time to the performance of the work, but may take in and do other work for other persons, it is not a contract to serve, and does not create the relation of master and servant, and therefore the Magistrate has no jurisdiction under the statute: thus where Hardy had contracted to weave certain pieces of silk goods at certain prices, and neglected his work, whereupon the Magistrate committed him under the statute, he recovered damages in an action against the Magistrate for false imprisonment.¹ A waller contracted to build a wall for a certain price in a certain time. He refused to complete his work, and was committed to prison by a Magistrate. It was decided that the Magistrate had no jurisdiction, because the contract did not create the relation of master and servant. It did not bind him to employ his whole time in the work, and not to work for any other person until it was finished, as appeared to have been the case in *Lowther v. Earl Radnor*.² On the same principle a man was discharged from custody who had been committed to prison by a Magistrate, because, having entered into a contract to print certain pieces of woollen cotton goods, he had neglected to perform his contract.³

It has also been decided that the 6th Geo. III. c. 53 does not extend to domestic servants, the words "other persons" in that statute being confined to servants of the same class as those specially mentioned, that is, servants in husbandry, or some trade or business.⁴

¹ *Hardy v. Ryle*, 9 B. and C. 603.

² *Lancaster v. Greaves*, 9 B. and C. 628.

³ *Ex parte Johnson*, 7 Dowl. 702.

⁴ *Kitchen v. Shaw*, 6 A. and E. 729. *Ex parte Hughes*, 18 Jur. 447.

Nor is a bailiff or superintendent of a farm a servant within the Act.¹

99. Although the language of the statute 4 Geo. IV. c. 34 is general, and empowers the Magistrate to punish a servant who absents himself from his service, it must be understood in a qualified sense, and as prohibiting merely an absence without lawful excuse. Before the Magistrate can commit, he must be convinced that there was no lawful excuse for the absence, and must express his conviction on the face of his warrant.² He ought not to convict unless satisfied that the servant absented himself without lawful excuse, knowing at the time that he had not such excuse.³ When a servant entered into a contract to serve a master while he was under a prior contract of service and refused to enter the said service, he had lawful excuse for doing so, and could not be convicted.⁴ But when the servant deserted because his master would not act upon an arbitration, it was held not to be a lawful excuse.⁵ A conviction of the servant for leaving the service does not put an end to the contract, and if after he has suffered imprisonment he refuses to serve he may be convicted again, and has no lawful excuse for absenting himself.⁶ The statute does not empower the Magistrate to punish in a case of misconduct which is not reasonably within the execution of the contract; otherwise, the Magistrate might inflict a heavier or slighter punishment than the servant was liable to by law. If

¹ *Davis v. Ld. Berwick*, 3 E. and E. 549.

² *Seth Turner's case*, 9 Q. B. 80. *Re Hammond*, 9 Q. B. 92. *Re Gerwood*, 2 E. and B. 952.

³ *Rider v. Wood*, 2 E. and E. 338.

⁴ *Ashmore v. Horton*, 2 E. and E. 360.

⁵ *Willett v. Boote*, 6 H. and N. 26.

⁶ *Exp. Baker*, 7 E. and B. 679; 2 H. and N. 219. *R. v. Youle*, 7 H. and N. 753. *Unwin and Clarke*, L. R. 1 Q. B. 417.

in the course of his service, the servant is guilty of a felony, such as stealing or embezzling his master's property, he is entitled to have his case considered by a jury, and the Magistrates have no jurisdiction to decide it.¹

100. By the 20th Geo. II. c. 19, the Magistrate might commit the servant to the House of Correction, there to remain, *and be corrected*. In the other statutes it is not specified that the servant is to be corrected. This correction means whipping; and if the proceeding is taken under the first statute, it is a necessary part of the sentence; if under the other, it cannot be inflicted.²

Under 4 Geo. IV. c. 34, the Magistrate has jurisdiction to entertain a complaint made after the contract of service has ended.³ Under 20 Geo. II. c. 19, the Magistrate may make a deduction from the amount agreed to be paid, on the ground that there has been no meritorious performance of the contract; for instance, that the servant's work has been badly done.⁴ Under 4 Geo. IV. c. 34, s. 3, he may order wages already due to be abated.⁵ Under 4 Geo. IV. c. 34, if he ordered the servant to be imprisoned he was bound to order an abatement of the wages during the imprisonment.⁶ A decision of the complaint by the County or other competent Court cannot be re-opened by a proceeding under the statutes.⁷ If under the Act of 1867 the Magistrates order the servant to fulfil the contract, and order him to be imprisoned in case of default, the subsequent

¹ Ex parte Jacklin, 2 D. and L. 103.

² Rex v. Hoseason, 14 East, 605. Wood v. Fenwick, 10 M. and W. 195.

³ Rex v. Proud, L. R. 1 C. C. R. 71.

⁴ Sharp v. Hainsworth, 3 B. and S. 139.

⁵ Re Biggins, 5 L. T. N. S. 605. ⁶ Re Baker, 2 H. and N. 219.

⁷ Routledge v. Hislop, 2 E. and E. 549.

order is, it seems, inoperative. He should be summoned after he has made default.¹

101. Another mode of settling disputes between masters and workmen is by arbitration, under the statute 5 Geo. IV. c. 96. The following subjects of dispute between masters and workmen, and between workmen and those employed by them in any trade or manufacture, may be arbitrated under the statute:—Disagreements respecting the price to be paid for work done or in the course of being done, whether such disputes respect the payment of wages agreed on, or the hours of work agreed on, or damage done to the work, or delay in finishing the work, or the not finishing the work in a good and workmanlike manner, or according to contract, or to bad materials;—cases where the workmen are employed to work a new pattern which requires them to purchase new implements, or to make alterations upon old implements for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to the workmen in respect thereof;—disputes respecting the length, breadth, or quality of pieces of goods, or, in the case of the cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof;—disputes respecting the wages or compensation to be paid for pieces of goods made of any great or extraordinary length;—disputes in the cotton manufacture respecting the manufacture of cravats, shawls, polieat, romal, and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs;—disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled;—disputes between masters and persons engaged in sizing or ornamenting goods.

¹ Crane v. Powell, L. R. 4 C. P. 123.

But Justices are not authorised to establish a rate of wages, or price of labour or workmanship, at which the workman shall in future be paid, unless with the mutual consent of both masters and workmen. Complaints by a workman as to bad materials must be made within three weeks of his receiving the same,—complaints for any cause within fourteen days after the cause of complaint has arisen.¹

Whenever such subjects of dispute arise, either the master or workmen may demand and have an arbitration. They may come before, or agree by writing under their hands to abide by, the decision of any Magistrate of the place where the complainant resides, and he may decide the dispute. If the parties do not appear before the Magistrate, or do not agree to refer the dispute to him, he may summon one party on the complaint of the other, and on the return of the summons, if the cause of complaint continues, he may nominate four or six persons resident in or near the place where the dispute has arisen, one half being master manufacturers, or agents, or foremen of masters, and the other half workmen in the particular manufacture: out of the masters so nominated, the master is to choose one, and out of the workmen, the workman is to choose one, and the two so chosen have full power to settle the dispute.²

If either of the arbitrators refuses or delays to accept the arbitration, or neglects to act therein for two days, the Magistrate may appoint another in his stead. If the second arbitrator does not attend, the first may act by himself.³ The Magistrate is to appoint a time and place of meeting, and to give notice to the arbitrators and parties to the dispute, and to certify the nomination

¹ S. 2, 7 Wm. IV., and 1 Vict. c. 67, s. 1.

² S. 3, 7 Wm. IV., and 1 Vict. c. 67, s. 2.

³ S. 4.

and appointment in a form prescribed. The arbitrators are to examine the parties and their witnesses, and to determine the dispute within two days after their nomination, exclusive of Sunday. Their decision is final and conclusive.¹ If the complaint is by a workman, of bad warps or utensils, the place of meeting is to be at or as near as may be to the place where the work is carrying on; in other cases, at or as near as may be to the place where the work was given out.² If either fails to attend the appointment of arbitrators, the Magistrate may appoint one for him, out of the persons proposed for the absentee's selection.³ The arbitrators are to inspect the work, if necessary, and to examine the parties and their witnesses.⁴ They have power to compel the attendance of witnesses, and to punish them if they refuse to give evidence, by complaining to a Magistrate, who may commit the refractory witness for not more than two calendar months nor less than seven days.⁵

If the arbitrators cannot, within three days, agree, they are to go before the Magistrate by whom they were appointed, or, in his absence, before another of the district where the meeting was held, and state to him the points on which they differ, and he is to decide the case upon their statement within two days.⁶ If one of the arbitrators refuses to go before the Magistrate, he may, after summoning him, decide the case on the statement of the other.⁷

In all cases in which masters and workmen agree that their disputes shall be decided by arbitration, whether the cases are those mentioned in the Act or not, and although the mode of arbitration is different from that prescribed by the Act, the award has the same effect

¹ S. 5.² S. 6.³ S. 7.⁴ S. 8.⁵ S. 9.⁶ S. 10.⁷ S. 11.

as an award under the Act, and may be enforced in the same way.¹

If the work has been delivered by an agent or servant of the master, the proceedings may be taken against the agent or servant, and are binding on the principal ; and if the business is carried on by a partnership, proceedings against one partner are binding on all.² If the master becomes bankrupt, or assigns his property, the award may be enforced against the assignees or trustees, who must satisfy the workmen out of the property assigned.³ If the complainant is a married woman, or infant, proceedings may be taken in the name of the husband of the married woman, or of the father ; or if he be dead, of the mother ; or if both be dead, of one of the kindred, or of the surety under an apprentice deed of the infant.⁴

Either party may appoint a deputy in the matter of the arbitration.⁵

If the parties agree, a ticket may be delivered by the manufacturer to the workman, with the work ; which ticket, in the event of dispute, is evidence of all things mentioned therein.⁶ The master may keep a duplicate of the ticket, which is evidence if the workman does not produce the original.⁷

If a master does not, by himself, his clerk, or foreman, object to work within twenty-four hours after he has received it, he is not allowed afterwards to make any complaint in respect of the work so received.⁸

The parties may agree to extend the time limited by the act for making the award. This agreement must be written on the back of the Magistrate's certificate, and certified and signed by each party in the presence of a

¹ S. 13.² S. 14.³ S. 16.⁴ S. 17.⁵ S. 15.⁶ S. 18.⁷ S. 19.⁸ S. 20.

witness.¹ The award should be written on the back of the certificate, and should be in a form prescribed by the Act.² When the award has been performed, the party in whose favour it is made should give an acknowledgment on the back of the certificate, in a prescribed form.³

The arbitrators, or Magistrate when he decides the dispute, have power to settle the expenses of the arbitration, including compensation for loss of time.⁴

The award may be enforced by distress and imprisonment.⁵

By a subsequent Act, called the Arbitration (Masters and Workmen) Act, 1872,⁶ it is enacted that,

1. The following provisions shall have effect with reference to agreements under this Act :

(1.) An agreement under this Act shall either designate some board, council, persons or person as arbitrators or arbitrator, or define the time and manner of appointment of arbitrators or of an arbitrator; and shall designate, by name or by description of office or otherwise, some person to be, or some person or persons (other than the arbitrators or arbitrator) to appoint an umpire in case of disagreement between arbitrators :

(2.) A master and a workman shall become mutually bound by an agreement under this Act (hereinafter referred to as "the agreement") upon the master or his agent giving to the workman and the workman accepting a printed copy of the agreement :

Provided that a workman may, within forty-eight hours after the delivery to him of the

¹ S. 21.

² S. 22.

³ S. 23.

⁴ S. 31.

⁵ S. 24.

⁶ 35 & 36 Vict. c. 46.

agreement, give notice to the master or his agent that he will not be bound by the agreement, and thereupon the agreement shall be of no effect as between such workman and the master :

- (3.) When a master and workman are bound by the agreement they shall continue so bound during the continuance of any contract of employment and service which is in force between them at the time of making the agreement, or in contemplation of which the agreement is made, and thereafter so long as they mutually consent from time to time to continue to employ and serve without having rescinded the agreement. Moreover, the agreement may provide that any number of days' notice, not exceeding six, of an intention on the part of the master or workman to cease to employ or be employed shall be required, and in that case the parties to the agreement shall continue bound by it respectively until the expiration of the required number of days after such notice has been given by either of the parties :
- (4.) The agreement may provide that the parties to it shall, during its continuance, be bound by any rules contained in the agreement, or to be made by the arbitrators, arbitrator, or umpire as to the rate of wages to be paid, or the hours or quantities of work to be performed, or the conditions or regulations under which work is to be done, and may specify penalties to be enforced by the arbitrators, arbitrator, or umpire for the breach of any such rule :

- (5.) The agreement may also provide that in case any of the following matters arise they shall be determined by the arbitrators or arbitrator, viz. :

a. Any such disagreement or dispute as is mentioned in the second section of the principal Act ; or

b. Any question, case, or matter to which the provisions of the Master and Servant Act, 1867, apply ;

and thereupon in case any such matter arises between the parties while they are bound by the agreement the arbitrators, arbitrator, or umpire shall have jurisdiction for the hearing and determination thereof, and upon their or his hearing and determining the same no other proceeding shall be taken before any other court or person for the same matter ; but if the disagreement or dispute is not so heard and determined within twenty-one days from the time when it arose, the jurisdiction of the arbitrators, arbitrator, or umpire shall cease, unless the parties have, since the arising of the disagreement or dispute, consented in writing that it shall be exclusively determined by the arbitrators, arbitrator or umpire :

A disagreement or dispute shall be deemed to arise at the time of the act or omission to which it relates :

- (6.) The arbitrators, arbitrator, or umpire may hear and determine any matter referred to them in such manner as they think fit, or as may be prescribed by the agreement :
- (7.) The agreement, and also any rules made by the arbitrators, arbitrator, or umpire in pur-

suance of its provisions, shall in all proceedings as well before them as in any court be evidence of the terms of the contract of employment and service between the parties bound by the agreement :

- (8.) The agreement shall be deemed to be an agreement within the meaning of the thirteenth section of the principal Act for all the purposes of that Act :
- (9.) If the agreement provides for the production or examination of any books, documents, or accounts, subject or not to any conditions as to the mode of their production or examination, the arbitrators, arbitrator, or umpire may require the production or examination (subject to any such conditions) of any such books, documents, or accounts in the possession or control of any person summoned as a witness, and who is bound by the agreement, and the provisions of the principal Act, for compelling the attendance and submission of witnesses, shall apply for enforcing such production or examination.

By 8 and 9 Vict. c. 77, manufacturers of woollen, worsted, linen, cotton, or silk hosiery, are bound to deliver to the workman, with the materials, a ticket of the materials and work to be done, containing certain specified particulars, under a penalty not exceeding £5 ; and the ticket, or duplicate kept by the manufacturer, is evidence in case of disputes. If the dispute relates to the improper or imperfect execution of the work, the work must be produced, and if not produced, must be taken to be properly executed. Power is given to the Magistrate to summon witnesses, and a penalty of £2

is imposed on a witness who has been paid or tendered his reasonable expenses, and does not attend in obedience to the summons.

By 8 and 9 Vict. c. 128, manufacturers of silk goods, or goods made of silk mixed with other materials, are bound to deliver to the weavers, unless both parties by writing under their hands agree to dispense therewith, a ticket stating the count or richness of the warp or cane; the number of shoots or picks required in each inch; the number of threads or weft to be used in each shoot; the name of the manufacturer, or the style or firm under which he carries on his business; the weaver's name, with the date of the engagement; the price in sterling money agreed on for executing each yard imperial standard measure of thirty-six inches of such work in a workmanlike manner; and are bound to make and preserve, until the work has been completed and paid for, a duplicate of the ticket: the ticket or duplicate is evidence in cases of disputes. If the subject of dispute relates to the improper or imperfect execution of the work, it must be produced; if not, it must be taken to be sufficiently and properly executed. Witnesses may be summoned, and if, on being paid or tendered their expenses, they disobey the summons, they are liable to a penalty of £5.

Jurisdiction is given to two Justices to order payment of wages to weavers, together with costs for loss of time, and to authorise weavers, in cases where their wages are not paid, to return their work unfinished, and to fine manufacturers for neglecting to pay wages,—£5 for the first offence, £10 for the second, and £5 extra for every subsequent offence, unless they have delivered to the weavers, within twenty-four hours after their refusal to pay, a note in writing, stating their reasons, and that they intend to have the work arbitrated.

102. A subject connected with the Law of Contracts between master and servant is the law relating to the combination between workmen, for the purpose of compelling masters to raise their wages or alter the conditions of their service. Such combinations are the reverse of the contracts already treated of,—contracts being combinations to work, and combinations being contracts not to work. Combinations between workmen for the purpose of placing them on an equality with their employers produced combinations between employers to enable them to resist the workmen. They were both illegal on common law principles as agreements in restraint of trade,¹ but they have now been legalised, and the law as to violence, molestation, and threat, by which workmen sought to enforce their resolutions, has been defined, by the Trade Union Act, 1871 (34 & 35 Vict. c. 31), as follows:

Criminal Provisions.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

4. Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

¹ *Hilton v. Eckersley*, 6 E. and B. 47. *Hornby v. Close*, L. R. 2 Q. B. 143. *Farrer v. Close*, L. R. 4 Q. B. 602.

- (1.) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed :
- (2.) Any agreement for the payment by any person of any subscription or penalty to a trade union :
- (3.) Any agreement for the application of the funds of a trade union,—
- a.* To provide benefits to members ; or,
 - b.* To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or,
 - c.* To discharge any fine imposed upon any person by sentence of a court of justice ; or,
- (4.) Any agreement made between one trade union and another ; or,
- (5.) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

5. The following Acts, that is to say,

- (1.) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same ;
- (2.) The Industrial and Provident Societies Act, 1867, and any Act amending the same ; and
- (3.) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union

made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

Registered Trade Unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall

vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such

trustee or other officer may be served by leaving the same at the registered office of the trade union.

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have

since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate, upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: provided, that nothing herein contained shall prevent the said trade union, or

in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Registry of Trade Union.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect :

- (1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act :
- (2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules :
- (3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public :
- (4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars, as if it were the annual general statement required as herein-

after mentioned to be transmitted annually to the registrar :

- (5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with :
- (6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect :

- (1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act :
- (2.) A copy of the rules shall be delivered by the trade union to every person on demand, on payment of a sum not exceeding one shilling.

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding

five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him: until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such

general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

The registrars shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanour.

Legal Proceedings.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by The Summary Jurisdiction Acts.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by The Summary Jurisdiction Acts.

Provided as follows :

1. The "Court of Summary Jurisdiction," when

hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(A.) In England,

- (1.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :
- (2.) In the city of London, of the Lord Mayor or any alderman of the said city :
- (3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(B.) In Ireland,

- (1.) In the police district of Dublin metropolis, of a divisional justice :
- (2.) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court, under the provisions of The Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived

shall be required on the part of the informant or prosecutor.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made :
- (2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof :
- (3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court :
- (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody :
- (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the

matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

22. A person who is a master, or father, son, or

brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

23. In this Act—

The term Summary Jurisdiction Acts means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” and any Acts amending the same :

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, “the Petty Sessions (Ireland) Act, 1851,” and any Act amending the same.

In Scotland, the term “misdemeanor” means a crime and offence.

The term “trade union” means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful com-

bination by reason of some one or more of its purposes being in restraint of trade : provided that this Act shall not affect—

1. Any agreement between partners as to their own business ;
2. Any agreement between an employer and those employed by him as to such employment ;
3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

[See also Trade Union Act Amendment Act, 1876 (39 & 40 Vic. c. 22), in Appendix.]

FIRST SCHEDULE.

Of Matters to be provided for by the Rules of Trades Unions registered under this Act.

1. The name of the trade union and place of meeting for the business of the trade union.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

SECOND SCHEDULE.

Maximum Fees.

	£	s.	d.
For registering trade union	1	0	0
For registering alterations in rules	0	10	0
For inspection of documents	0	2	6

103. By the Act to amend the Criminal Law relating to Violence, Threats, and Molestation,¹

1. Every person who shall do any one or more of the following acts ; that is to say,

- (1.) Use violence to any person or any property,
- (2.) Threaten or intimidate any person in such manner as would justify a justice of the peace, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace,
- (3.) Molest or obstruct any person in manner defined by this section,

with a view to coerce such person,—

- (1.) Being a master to dismiss or to cease to employ any workman, or being a workman to quit any employment or to return work before it is finished ;
- (2.) Being a master not to offer or being a workman not to accept any employment or work ;
- (3.) Being a master or workman to belong or not to belong to any temporary or permanent association or combination ;
- (4.) Being a master or workman to pay any fine or penalty imposed by any temporary or permanent association or combination ;
- (5.) Being a master to alter the mode of carrying on his business, or the number or description of any persons employed by him,

shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months.

A person shall, for the purposes of this Act, be deemed to molest or obstruct another person in any of the following cases ; that is to say,

¹ 34 & 35 Vict. c. 32.

- (1.) If he persistently follow such person about from place to place :
- (2.) If he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof :
- (3.) If he watch or beset the house or other place where such person resides or works, or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follow such person in a disorderly manner in or through any street or road.

Nothing in this section shall prevent any person from being liable under any other Act, or otherwise, to any other or higher punishment than is provided for any offence by this section, so that no person be punished twice for the same offence.

Provided that no person shall be liable to any punishment for doing or conspiring to do any act on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing as hereinbefore mentioned.

Legal Proceedings.

2. All offences under this Act shall be prosecuted under the provisions of The Summary Jurisdiction Acts.

Provided as follows :—

- (1.) The “Court of Summary Jurisdiction,” when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; (that is to say)

(a.) In England,

(i.) In any place within the juris-

diction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :

(ii.) In the city of London, of the Lord Mayor or any alderman of the said city :

(iii.) In any other place, of two or more justices of the peace sitting in petty sessions.

(b.) In Scotland, of the Sheriff of the county or his substitute.'

(c.) In Ireland,

(i.) In the police district of Dublin metropolis, of a divisional justice :

(ii.) In any other place, of a resident magistrate.

(2.) The description of any offence under this Act in the words of such Act shall be sufficient in law.

(3.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

3. In England and Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made :
- (2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof :
- (3.) The appellant shall immediately after such notice enter into a recognizance in the sum of ten pounds before a justice of the peace, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court :
- (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody :
- (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and, if the matter be remitted to the court of summary jurisdiction, the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with

the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

4. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All offences under this Act shall be prosecuted by the procurator fiscal of the county.

5. A person who is a master, father, son, or brother of a master in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Definitions.

6. In this Act—

The term Summary Jurisdiction Acts shall mean as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary

Convictions and Orders," and any Acts amending the same ;

As to Scotland, "The Summary Procedure Act, 1864 ;"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

A combination amongst workmen to raise the price of labour is a violent and unnatural interference with the laws of demand and supply which regulate the price of labour, and is more injurious to the workmen themselves than to any one else. The immediate effect of a combination is to throw the parties to it out of employment, and deprive them of their means of support. If successful, it raises the price of the commodity, and diminishes the demand for it, and for the labour of the workmen employed in producing it. A combination has sometimes the effect of compelling masters to introduce new workmen into their trades : and while it decreases the fund to be divided amongst the labourers, increases the number of those who are to be supported by it. It tends therefore to diminish the demand for labour, and to increase the supply of it. It can never be ultimately successful, because the superfluous labourers who are deprived of work by the first consequence of the combination, must go on competing for employment until the demand for their work is increased so as to employ them all, which it cannot be until prices and wages are brought to their former level, or below it.

The only mode by which workmen's wages can be

permanently and effectually raised, is by the demand for labour increasing faster than the supply. This may happen in the case of particular workmen, by an improvement in their skill beyond that of their fellows. In the case of the general body of workmen in a particular trade, their condition may be improved by an extension of the demand for the commodities they produce, which can only be caused by producing the things more quickly and cheaply, and thereby increasing the class of persons who use them. But the condition of the general body of workmen can only be improved by an increased production of the necessities and conveniences of life, so that there may be enough for all. If these increase in sufficient quantity, every workman will be enabled to have them, however low his wages; if they do not, he cannot, however high his wages. Thus, supposing a sufficient quantity of stockings are not manufactured for every person in the kingdom, some must go without; but if more than sufficient are manufactured, every workman will be able to have stockings, because the prices must fall so as to be within the means of the workman who receives the lowest wages, or the stockings must remain unsold and useless to the manufacturer.

Combinations are usually entered into upon the supposition that the workman does not receive his fair share of the profits of the manufacture. Upon this subject the observations in the *Edinburgh Review* are worthy of attention. "The capitalist and the workman are joint agents,—co-operative partners, in fact,—in the production of a certain article (say cotton cloth), and joint sharers in the profit arising out of the sale. The capitalist supplies funds, machinery, and superintendence; the workman supplies handicraft skill and manual labour. At the end of the year, or of some

shorter period, the net returns are to be divided between them, in a proportion either formally agreed upon or tacitly decided by custom.

“But the labourer is a poor man; he has no store in his cupboard, and no money in his purse. He must purchase food, clothing, and shelter from day to day, and therefore cannot wait until the end of the year to receive his share of the common gain. The capitalist, therefore, should advance to him what it is thought probable that his share will amount to, minus, perhaps, the interest on the advance, and possibly some further small deduction to compensate the risk of having over-estimated the workman's share.

“But further, the results of a manufacturing enterprise are sometimes not profit, but loss,—always occasional loss,—frequently loss for years together,—sometimes even loss on the whole. But the workman, who could not bear to wait, can still less bear his share of the loss: the capitalist has therefore to encounter all the losses, for he cannot call upon the labourer to refund the wages he has received.

“The original compact (tacit or formal) by which the division of profits would have been otherwise determined has thus become modified, for the convenience of the workmen, into the form in which we at present see it. The workman receives his share of the profits before any profits are made; he receives his share in years in which no profit is made; he receives it in years in which profits are turned into losses; he receives it sometimes when the master is being gradually ruined in the partnership, which, if he be but prudent, will have enriched it. What deductions from his original share should be made in consideration of all these predicates? It is evident that, in common justice, he cannot expect to receive as much as if he waited till

profits were realised, and bore his proportion of losses when losses were incurred.

“The workman’s wages, then, are his share of the profits commuted into a fixed payment. This commuted share he is sure of receiving as long as the manufacturing enterprise in which he is engaged actually goes on. The capitalist alone endures all the losses, alone furnishes all the advances, alone encounters the risk of ruin, and receives only the share of profit which may remain over after the labourer’s commuted share is paid. The workman’s share is a first mortgage,—the capitalist’s share is only a reversionary claim.”¹

It may be added, that when capitalists receive more than their just share of profits, their capital increases faster than they can find use for it, and they embark it in undertakings by which they employ labour to the profit of the labourer, but to their own loss. This is generally true; unprofitable speculation, or, in other words, the employment of labour which is solely beneficial to the labourer, being the natural result of the too rapid accumulation of capital: although there are some men who, from peculiar sagacity or good fortune, choose only profitable investments of capital, and avoid the bad; and others who, from different causes, adopt an opposite course. The result is the same to the labourer, for, however capital is employed, it is always to his advantage.

All the money or capital in the world is constantly being used in the employment of labour: the faster it circulates, the more labourers are employed, and the better is their condition. The combination of and stoppage of work by workmen does not hasten the circulation of capital, and therefore is not the remedy for the evils they suffer. On the contrary, the circula-

¹ *Edinburgh Review*, April, 1849, p. 427.

tion of capital is increased by the subordination of the workman to his employer. The more complete this subordination, the greater is the confidence of the capitalist in the labourer, and the more readily is he induced to employ his capital.

A combination is always an evil, because it involves a stoppage of work : the things which would have been produced in the interval are lost to the consumer : the wages that would have been earned are lost to the workman ; the profits that would have been made are lost to the employer, and the circulation of capital is impeded.

FORMS OF CONTRACTS.

- I. CONTRACT TO BUILD A HOUSE, ETC., UNDER THE SUPERINTENDENCE OF A SURVEYOR, WITH A SURETY FOR THE BUILDER.
- II. SUB-CONTRACT BETWEEN A BUILDER AND A CARPENTER.
- III. CONTRACT TO DO REPAIRS OR PERFORM OTHER WORKS NOT UNDER THE SUPERINTENDENCE OF A SURVEYOR.
- IV. AGREEMENT FOR ENGAGEMENT OF CANVASSER AND COLLECTOR OF TRADE UNION.
- V. AGREEMENT FOR ENGAGEMENT OF A SHOP ASSISTANT.
- VI. ANOTHER FORM OF CONTRACT OF SERVICE.
- VII. AGREEMENT BETWEEN MASTER AND WORKMAN, EMBODYING WORKING RULES.
- VIII. WORKING RULES TO BE EMBODIED IN AGREEMENT BETWEEN MASTER AND WORKMAN.

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I.—Contract to build a House, &c., under the Superintendence of a Surveyor; with a Surety for the Builder.

AGREEMENT made the day of , in the year of
our Lord , between T. G., of , Builder,
of the first part; T. C., of , of the second
part; and J. B., of , of the third part.

WHEREAS the said J. B. is possessed of a piece of ground situate , upon which he is desirous of erecting a dwelling-house and offices according to the elevation, plans, and specifications prepared for that purpose by W. M., surveyor, and under the direction and to the satisfaction of the said W. M. or other surveyor for the time being of the said J. B., his executors, administrators, or assigns, which said elevation, plans, and specifications are marked with the letters A, B, C, D, E, F, and G, and are signed by the said T. G., T. C., and J. B., and the said specification is contained in the schedule hereunder written, or hereunto annexed; AND the said T. G. has proposed to erect and complete the said dwelling-house and offices, and to make and execute all other works mentioned and specified in the said elevation, plans, and specifications, within the time hereinafter limited for that purpose, and according to the stipulations and agreements hereinafter contained, at or for the price or sum of £4,480, which proposal the said J. B. hath agreed to accept of the said T. G., together with the said T. C. as his surety, entering into the agreements hereinafter contained :

NOW IT IS HEREBY WITNESSED, That the said T. G. and T. C. do for themselves, their heirs, executors and administrators, and each and every one of them doth for himself, his heirs, executors, and administrators, hereby agree with and to the said J. B., his executors, administrators and assigns, in manner following: (that is to say,) that he the said T. G. shall at his own costs and charges forthwith erect and complete, make and execute, with all proper and necessary materials, workmanship and labour of the best kinds in every respect, and in the most substantial and workmanlike manner, upon the said piece of ground, a dwelling-house and offices behind the same, with the appurtenances and all other works, matters and things mentioned and specified in the same elevation, plans, and specification, under the direction and to the satisfaction of the said W. M. or other the surveyor for the time being of the said J. B., his executors, administrators or assigns; AND for that purpose shall find and provide all proper and necessary materials, tools, scaffolding, cartage, cordage, and other implements and machinery: and shall make good all damages which may be occasioned either to the said dwelling-house, offices, and works, or any of them, or to adjoining buildings by the execution of the same works or any of them: and shall cleanse all bog-holes, drains, and cesspools in or about the premises, and cart and clear away at such times and in such manner as shall or may be directed by the said W. M. or other surveyor as aforesaid, all surplus earth and waste or useless materials, implements and machinery which may from time to time remain during the execution of the same works, or at the completion thereof; AND ALSO shall pay and discharge all fees now due, or hereafter to become due, to the district surveyor or surveyors in respect of the premises, and

shall indemnify the said J. B., his executors, administrators and assigns, of and from the same fees, and all claims and demands on account thereof: AND shall at his own costs and charges from time to time, until the said dwelling-house, offices, and works shall be erected, completed, made, and executed, and the said J. B., his executors, administrators or assigns, shall take possession of the premises, insure or cause to be insured, in the joint names of the said J. B., his executors, administrators or assigns, and of the said T. G., his executors, or administrators, and for the sum of £ , all and singular the erections and buildings for the time being standing on the said piece of ground, to the full value thereof, in some or one of the public insurance offices in London or Westminster, and shall deliver the policy of insurance to the said J. B., his executors, administrators and assigns, and shall produce and show to the said J. B., his executors, administrators or assigns, the receipts for the premium and duty attending such insurance from time to time, when requested so to do; and that in case of fire, all the moneys to be recovered by virtue of such insurance shall forthwith be applied in reinstating the premises, under the direction and to the approbation of the said W. M. or other surveyor as aforesaid: AND that the said T. G. shall well and sufficiently cover in, or cause to be covered in, the dwelling-house and offices so to be erected as aforesaid, before the day of ; and shall complete, make and execute, or cause to be completed, made and executed, all and singular the said dwelling-house, offices, and other works in manner aforesaid, and according to the true intent and meaning of these presents before the day of ; AND that if the said T. G., his executors or administrators, shall not so well and sufficiently cover in the

said dwelling-houses and offices before the said day of _____, or shall not so complete, make and execute the said dwelling-house, offices, and works, before the said _____ day of _____, they the said T. G. and T. C. shall pay to the said J. B., the sum of £5 for every week during which the said dwelling-house and offices shall remain uncovered in after the said _____ day of _____, and the like sum for every week the said dwelling-house, offices, and works shall remain unfinished after the said _____ day of _____; which sums may be recovered as liquidated damages, or may be deducted from the sums payable to the said T. G. under this agreement. PROVIDED ALWAYS, that in case the said J. B., his executors, administrators or assigns, or his or their surveyor, shall require any extra or additional works to be done, or shall cause the works to be delayed in their commencement or their progress, the said T. G. shall be allowed to have such additional time for covering in and finishing the said buildings and works, beyond the said days above fixed, as shall have been necessarily consumed in the performance of such extra or additional works, or as shall have been lost by the delay caused by the said J. B., his executors, administrators or assigns, or his or their surveyor as aforesaid; and the said payments for delay shall not become payable until after the expiration of such additional time or times.

AND the said T. G. and T. C. do hereby further agree with the said J. B., that in case the said W. M. or other surveyor as aforesaid shall be dissatisfied with the conduct of any workman employed by the said T. G. in the said works, or with any materials used or brought upon the said premises for the purpose of being used in the said works, and shall give notice thereof in writing under his hand to the said T. G., he the said

T. G. will forthwith discharge such workman from the said works and remove the said materials; and that in case the said T. G. shall not in the judgment of the said W. M. or other surveyor as aforesaid, employ a sufficient number of workmen in the execution of the said works, or have on the premises a sufficient quantity of materials, tools or implements of proper quality for the said works, and the said W. M. or other surveyor as aforesaid shall by writing under his hand require the said T. G. to employ an additional number of workmen, or bring upon the premises an additional quantity of material, tools or implements of proper quality, and shall specify in such notice the number and description of additional workmen to be employed, and the quantity and description of additional materials, tools or implements to be supplied, and the said T. G. shall forthwith employ in the said works such additional number of workmen, and shall forthwith bring upon the premises such additional quantity of materials, tools or implements for the said works; and that in case he shall refuse or neglect for the space of seven days to comply with any such notice or request, it shall be lawful for the said W. M. or other surveyor as aforesaid to dismiss and discharge the said T. G. from the further execution of the said works, and for the said J. B., his executors, administrators and assigns, to employ some other person to complete the same; and that in such case the sum agreed to be paid to such other person to complete the said works (such sum being approved by the said W. M. or other surveyor as aforesaid) shall be deducted from the said sum of £4,480, and the balance, after making any other deductions which the said J. B. shall be entitled to make under this agreement, shall be paid by the said J. B. to the said T. G. in full for the work done by him, at the

expiration of one month after he shall have been so discharged as aforesaid: AND it is hereby further agreed by and between the parties hereto, that all the materials brought upon the said piece of ground for the purpose of being used in the said buildings, except such as shall be disapproved of by the said W. M. or other surveyor as aforesaid, shall, immediately they shall be brought upon the said premises, become the property of the said J. B., and shall be used in the said works.

AND the said J. B. doth hereby, in consideration of the work so agreed to be done by the said T. G., agree with the said T. G., that he, the said J. B., shall pay to the said T. G. for the same the said sum of £ in manner following: that is to say, the sum of £150 within one week after the said W. M. or other surveyor as aforesaid shall have certified in writing to the said J. B., his executors, administrators or assigns, under his hand, that work to the value of £200 has been done under this agreement, and the further sum of £150 within one week after the said W. M. or such other surveyor shall have certified as aforesaid, that further work to the value of £200 has been done under this agreement, and so on shall pay £150 for every £200 worth of work so certified as aforesaid, until the whole of the said work shall be finished, and shall pay the balance remaining unpaid within one month after the said work shall have been completed and finished to the satisfaction of the said W. M. or such other surveyor, and the said W. M. or such other surveyor shall have certified to the said J. B. that the said works have been completed and finished to his satisfaction. PROVIDED ALWAYS, and it is hereby further agreed by the parties hereto, and particularly by the said T. G. and T. C., that if the said J. B., his

executors, administrators or assigns, shall at any time or times be desirous of making any alterations or additions in the erection or execution of the said dwelling-house, offices, and other works, then and in such case the said T. G. shall erect, complete, make and execute the said dwelling-house, offices, and other works, with such alterations and additions as the said J. B., his executors, administrators or assigns, or the said W. M. or such other surveyor, shall from time to time direct by writing under his or their hand or hands, and to the satisfaction of the said W. M. or such other surveyor; and the sum and sums of money to be paid or allowed between the said parties in respect of such alterations and additions shall be settled and ascertained by the said W. M. or such other surveyor, whose determination shall be final. PROVIDED ALSO, and it is hereby further agreed, that in the settling and ascertaining the said sum or sums of money, the said W. M. or such other surveyor shall not include any charge for day-work, unless an account thereof shall have been delivered to the said J. B., his executors, administrators or assigns, or the said W. M. or such other surveyor, at the end of the week in which the same shall have been performed. PROVIDED ALSO, and it is hereby further agreed, that no such alteration or addition shall release the said T. G. and T. C., their executors or administrators, or any or either of them, from the observance and performance of the agreements herein contained on the part of the said T. G., his executors or administrator, to be observed and performed, so far as relates to the other parts of the said dwelling-house, offices, and works; but that the same agreements shall in all respects be observed and performed in like manner as if no such alteration or addition had been directed. PROVIDED ALSO, and it is hereby agreed, that

if the said W. M. shall die, or cease to act as the surveyor of the said J. B., his executors, administrators, or assigns, and the said T. G., his executors or administrators, shall be dissatisfied with the surveyor for the time being, to be appointed by the said J. B., his executors, administrators or assigns, then it shall be lawful for the said T. G., his executors or administrators, at his own expense, to employ a surveyor on his behalf in the adjustment of the accounts, to act with the surveyor for the time being of the said J. B., his executors, administrators or assigns; and in case of disagreement between such two surveyors, they shall be at liberty to nominate a third; and the said three surveyors, or any two of them, shall and may exercise all the powers and discretion which the said W. M. could or might have exercised under or by virtue of these presents, if he had lived and continued to act as the surveyor of the said J. B., his executors, administrators or assigns. And it is hereby further agreed, that if the said T. G., his executors or administrators, shall so employ a surveyor on their behalf, he shall be nominated within ten days after the said T. G. shall be informed of the surveyor for the time being appointed by the said J. B., his executors, administrators or assigns, and notice in writing shall forthwith be given of such nomination to the said J. B., his executors, administrators or assigns. IN WITNESS, &c.

SCHEDULE.—[The Specification referred to by the foregoing Articles of Agreement.]

II.—*Sub-contract between a Builder and a Carpenter.*

AGREEMENT made the day of , in the year of
our Lord , between T. G., of , Builder,
and C. D., of , Carpenter.

WHEREAS the said T. G. hath entered into a contract with J. B., of, &c., to erect a dwelling-house and offices according to certain plans, elevations, and specifications referred to in the said contract, under the superintendence of W. M. or other surveyor of the said J. B., and which contract is dated the day of ; Now it is hereby agreed, that in consideration of the sum of £ , to be paid by the said T. G. to the said C. D. as hereinafter mentioned, the said C. D. shall do all the carpenter's work necessary to be done for the completion of the said contract, and referred to in the said plans and specifications, and provide all materials, tools and implements necessary for the performance of such work, and shall do the same in all things according to the said contract and specifications, and shall in all things abide by, perform, fulfil and keep the said terms and stipulations of the said contract, so far as the same are or shall be applicable to such carpenter's work; and that in case the said T. G. shall become liable to pay any penalties under the said contract in consequence of the delay of the said C. D. in the performance of the work agreed to be performed by him, the said C. D. shall pay to the said T. G. the amount of such penalties; and that in case the said W. M. or other surveyor appointed to superintend the works under the said contract shall disapprove of the work done by the said C. D. or the materials used by him, or the manner in which such work is done, it shall be lawful for the said T. G. to dismiss and discharge the said C. D. from the

further performance of such work, and employ some other person to complete the same; and that in such case the money which the said T. G. shall pay to the said other person for the completion of the said works shall be deducted from the sum which would otherwise be payable to the said C. D. under this agreement; AND that for the considerations aforesaid, the said T. G. shall pay to the said C. D. the sum of £ , in manner following: 75 per cent. on the price and value of the work done by the said C. D. during any week, to be paid to him on the Saturday in every week during the continuance of the said works, and the balance within one month after the completion of the said dwelling-house and offices.

III.—*Contract to do Repairs or perform other Works not under the Superintendence of a Surveyor.*

AGREEMENT made the day of , in the year of
our Lord , between A. B. of, &c., and C. D.
of, &c.

A. B. agrees to do all the works hereunder specified in the best and most workmanlike manner, and to provide for such works all necessary materials and things of the best quality, and to complete and finish the said works on or before the day of next; and in case the said works shall not be finished on or before the said day of , to pay or allow to the said C. D., out of the moneys payable under this agreement, the sum of £1 for each day during which the said works shall remain unfinished after the said day of ; and that in case the said C. D. shall require any additions or alterations to be made to the works hereunder speci-

fied, to execute such additions and alterations in the best and most workmanlike manner, with materials of the best quality: AND it is hereby agreed, that in case any additional works shall be required by the said C. D., or in case the said C. D. shall delay the execution of the said works, the said A. B. shall have such additional time for the performance of the said works, after the said day of , as shall have been consumed in the execution of such additional works, or as the time during which the said C. D. shall have delayed the said works, and that the payments for delay shall not be payable until after the expiration of such additional time: AND it is hereby further agreed, that materials brought upon the premises of the said C. D. for the purpose of being used in the said works, shall, if of proper description and quality, immediately become the property of the said C. D. ; AND the said C. D. agrees to pay to the said A. B. for the said works the sum of £ within one week after the same shall be finished: AND it is hereby agreed, that in case of any addition or alterations being made in or to the said works, the price of such additions or alterations shall be estimated in proportion to the said sum of £ for the whole of the said works, and such price so estimated shall be either added to or deducted from the sum of £ .

IV.—*Agreement for Engagement of Canvasser and Collector of Trade Unions.*

THIS AGREEMENT made this day of , 18 ,
between A. B. of , C. D. of , and E. F.
of (hereinafter called the employers), of
the one part, and X. Y. of (hereinafter

called the collecting clerk), of the other part, witnesseth that :—

1. The employers agree to employ the collecting clerk to canvass for members and to collect fees and subscriptions for the district of the Union of , hereinafter called the Society, whereof the employers are trustees, and the collecting clerk agrees to accept such employment from them personally on the conditions, terms and conditions hereinafter set forth.

2. The collecting clerk shall faithfully and diligently canvass for members, and shall collect subscriptions and other moneys for the society for and on behalf of the employers.

3. All moneys collected by the collecting clerk shall be, and from the time of collection shall be, deemed to be the moneys of the employers.

4. The collecting clerk shall keep a true and faithful account of all moneys so collected, and shall account for the same to the employers as and when required, and shall pay over all such moneys not less than once in every week to the employers, or to such person and at such place as the employers shall from time to time order, without any deduction.

5. At the time of each such payment of moneys collected the employers shall pay to the collecting clerk as his sole remuneration a sum equal to the amount of the entrance fees, and one-eighth part of the subscriptions collected by him, and then duly paid over.

6. The collecting clerk shall not, during the continuance of this agreement, act in a like capacity for any person or association other than the employers.

7. The district within which the collecting clerk shall be employed shall be , and not elsewhere.

8. The collecting clerk shall keep the employers indemnified and guaranteed against any default on his part, whether through loss or otherwise, by giving security to be approved by the employers to the amount of £ , and shall renew or replace such security as required.

9. This agreement shall be terminable by one month's notice in writing on either side, but if the collecting clerk shall at any time violate any of the provisions hereof, or neglect his duty, the employers may terminate the agreement and discharge him without notice.

Witness our hands,—

A. B., C. D., E. F. ; Employers.

X. Y. ; Collecting Clerk.

V.—Agreement for Engagement of a Shop Assistant.

AN AGREEMENT made the day of , 18 ,
between A. B. of , &c., and C. D. of , &c.

1. A. B. agrees to engage C. D. to be an assistant in A. B.'s shop and premises, No. 5, Street, , or in such other place in as A. B. shall decide, from the day of next, and C. D. agrees to become such assistant.

2. The hours during which C. D. shall attend to his duties shall be from A.M. to P.M., except on Saturday, when the hours shall be from A.M. to P.M.

3. C. D. shall be paid for his services £ every Friday, and shall reside on the premises, having a bedroom to himself, and a fire in winter, and board and lodging and washing, in addition to his salary.

4. This engagement may be ended by either party giving to the other, at any time (one) month's notice in writing.

A. B., C. D. ; Witness E. F.

VI.—*Another Form of Contract of Service.*

AN AGREEMENT made between A. B. of and C. D. of . The said A. B. agrees to hire the services of the said C. D., and the said C. D. agrees to render to the said A. B. his services at all fair and reasonable times in the capacity of for the term of , commencing on the day of , and terminating on the day of . And it is further agreed that the said A. B. shall pay to the said C. D. as such servant as aforesaid wages at the rate of by the and that such wages shall be paid on the day of each . A. B., C. D.

VII.—*Agreement between Master and Workman, embodying Working Rules.*

The subjoined form of agreement between a master and workman may be written or printed after trade rules (*see below*), both being signed by the parties :—

I, A. B., master in , agree to employ C. D., a journeyman in , and I, the said C. D., agree to serve the said A. B. as a journeyman aforesaid, upon the terms of the foregoing trade rules, signed by us of even date herewith. Dated this day of , 18 .
(Signed) A. B., C. D.

VIII.—*Trade Rules to be embodied in Agreement between Master and Workman.* (See above, Form VII.)

WORKING RULES FOR DISTRICT.

Rule 1.—The working time for in summer shall be hours per day for the first five days of the week and hours on Saturday.

Work to commence at A.M., and to cease at P.M., except on Saturday, when work shall cease at noon.

There shall be allowed half an hour for breakfast each day, and on the first five days of the week one hour for dinner.

Rule 2.—From the second Monday in and the following weeks the working time shall be hours per day for each of the first five days of the week, and hours on Saturday.

Work to commence at A.M. each day and to cease at P.M., except on Saturday, when work shall cease at noon.

There shall be allowed half an hour for breakfast for each day, and on the first five days of the week half an hour for dinner.

Rule 3.—That the minimum rate of wages be d. per hour; this clause to apply to all wherever employed, and at whatever class of work.

Rule 4.—That no time beyond the hours be worked except when necessary, and then to be paid at the rate of time and a half from the ordinary time of ceasing work until P.M., and double time from P.M. until the ordinary time of commencing work next morning.

On Saturdays double time to commence from noon, and continue for all time worked until the ordi-

nary time of starting on Monday morning. Bank Holidays and Christmas Day to be paid for the same as Sundays.

Rule 5.—One notice to terminate the engagement on either side, and all wages due to be paid at the expiration of such notice.

Rule 6.—That all sent to country jobs be paid London rate of wages, with per day in addition as country money. Employers to pay lodgings, rail, and 'bus fares to and from, and if the workman is discharged through no fault of his own his time travelling home to be paid for.

Rule 7.—That payment of wages commence at noon on Saturdays, and to be paid on the job, but if otherwise arranged walking time at the rate of three miles per hour to be allowed to get to the pay-table at .

Rule 8.—That no part of a workman's wage be deducted for charitable, benefit club, or insurance purposes under any circumstances (or except by mutual agreement, and in writing).

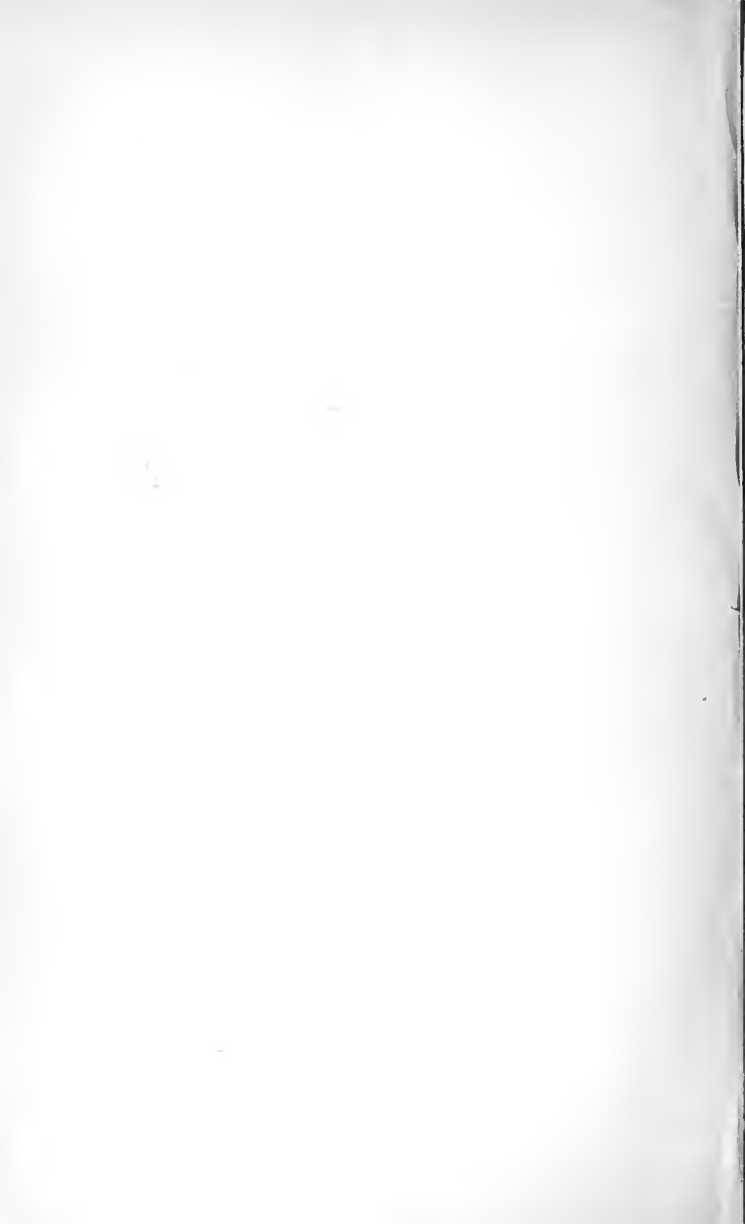
That the employer shall provide a suitable place on all jobs in which workmen can have their meals.

Rule 9.—The wages earned on Saturday only to be kept in hand as back time.

Rule 10.—The London District shall comprise the area contained within a radius of 12 miles from Charing Cross, and in which these rules shall be in force.

APPENDIX OF STATUTES.

- I. TRUCK ACT, 1831. 1 & 2 WILL. IV. c. 37.
- II. TRUCK AMENDMENT ACT, 1887. 50 & 51 VICT. c. 46.
- III. INFANTS' RELIEF ACT, 1874. 37 & 38 VICT. c. 62.
- IV. EMPLOYERS AND WORKMEN ACT, 1875. 38 & 39 VICT. c. 90.
- V. TRADE UNION ACT AMENDMENT ACT, 1876. 39 & 40 VICT. c. 22.
- VI. FACTORY AND WORKSHOP ACT, 1878. 41 VICT. c. 16.
- VII. FACTORY AND WORKSHOP ACT, 1891. 54 & 55 VICT. c. 75.
- VIII. EMPLOYERS' LIABILITY ACT, 1880. 43 & 44 VICT. c. 42.
- IX. PAYMENT OF WAGES IN PUBLIC-HOUSES PROHIBITION ACT, 1883.
46 & 47 VICT. c. 31.
- X. SHOP HOURS ACT, 1892. 55 & 56 VICT. c. 62.
- XI. MASTER AND SERVANT ACT, 1889. 52 & 53 VICT. c. 24.
- XII. MERCHANT SHIPPING ACT, 1889. 52 & 53 VICT. c. 46.
- XIII. ARBITRATION ACT, 1889. 52 & 53 VICT. c. 49.
- XIV. PARTNERSHIP LAW AMENDMENT ACT, 1890. 53 & 54 VICT. c. 39.



I. TRUCK ACT, 1831.

(1 & 2 WILL. IV. CAP. 37.)

WHEREAS it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm; be it therefore enacted by the King's most excellent majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in all contracts hereafter to be made for the hiring of any artificer in any of the trades hereinafter enumerated, or for the performance by any artificer of any labour in any of the said trades, the wages of such artificer shall be made payable in the current coin of this realm only, and not otherwise; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be and is hereby declared illegal, null, and void.

2. And be it further enacted, That if in any contract hereafter to be made between any artificer in any of the trades hereinafter enumerated, and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null, and void.

3. And be it further enacted, That the entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods, or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null, and void.

4. And be it further enacted, That every artificer in any of the trades hereinafter enumerated shall be entitled to recover from his employer in any such trade, in the manner by law provided for the recovery of servants' wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer in such trade as shall not have been actually paid to him by such his employer in the current coin of this realm.

5. And be it further enacted, That in any action, suit, or other proceeding to be hereafter brought or commenced by any such artificer as aforesaid, against his employer, for the recovery of any sum of money due to any such artificer as the wages of his labour in any of

the trades hereinafter enumerated, the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares, or merchandize had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares, or merchandize sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

[See now section 6 of Truck Act, 1887, *infra*.]

6. And be it further enacted, That no employer of any artificer in any of the trades hereinafter enumerated shall have or be entitled to maintain any suit or action in any court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandize sold, delivered, or supplied to any such artificer by any such employer, whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandize sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

[See now section 5 of Truck Act, 1887, *infra*.]

7. And be it further enacted, That if any such artificer as aforesaid, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred such artificer shall have earned or have become entitled to receive any wages for any labour by him done in any of the said trades, which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers or overseer of the poor in such parish or place to recover from the employer of such artificer in whose service such labour was done the full amount of wages so unpaid, and to proceed for the recovery thereof by all such ways and means as such artificer himself might have proceeded for that purpose; and the amount of the wages which may be so recovered shall be applied in re-imbursing such parish or place all costs and charges incurred in respect of the person or persons to become chargeable, and the surplus shall be applied and paid over to such person or persons.

8. Provided always, and be it further enacted, That nothing herein contained shall be construed to prevent or to render invalid any contract for the payment, or any actual payment, to any such artificer as aforesaid, of the whole or any part of his wages either in the notes of the Governor and Company of the Bank of *England*, or in the notes of any person or persons carrying on the business of a banker, and duly licensed to issue such notes in pursuance of the laws relating to His Majesty's Revenue of Stamps, or in drafts or orders for the payment of money to the bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid, but all payments so made with such consent as aforesaid, in any such notes, drafts, or orders as aforesaid, shall for the purposes of this Act be as valid and effectual as if such payments had been made in the current coin of the realm.

9. And be it further enacted, That any employer of any artificer in

any of the trades hereinafter enumerated, who shall, by himself or by the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby declared illegal, shall for the first offence forfeit a sum not exceeding ten pounds nor less than five pounds, and for the second offence any sum not exceeding twenty pounds nor less than ten pounds, and in case of a third offence any such employer shall be and be deemed guilty of a misdemeanor, and, being thereof convicted, shall be punished by fine only, at the discretion of the court, so that the fines shall not in any case exceed the sum of one hundred pounds.

10. [The first part of this clause has been repealed by schedule to 'Truck Act, 1887.] Provided always, That no person shall be punished as for a second offence under this Act unless ten days at the least shall have intervened between the conviction of such person for the first and the commission by such person of the second offence, but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a first offence; and that no person shall be punished as for a third offence under this Act, unless ten days at the least shall have intervened between the conviction of such person for the second and the commission by such person of the third offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a second offence; and that the fourth or any subsequent offence which may be committed by any such person against this Act shall be enquired of, tried, and punished in the manner hereinbefore provided in respect of any third offence; and that if the person or persons preferring any such information shall not be able or shall not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender as aforesaid shall be punished for each separate offence by him committed against the provisions of this Act by an equal number of distinct and separate penalties, as though each of such offences were a first or a second offence, as the case may be; and that no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence.

11. [Repealed by schedule to Truck Act, 1887.]

12. [Repealed by schedule to Truck Act, 1877.]

13. And be it further enacted, That no person shall be liable to be convicted of any offence against this Act committed by his or her copartner in trade, and without his or her knowledge, privity, or consent; but it shall be lawful, when any penalty, or any sum for wages, or any other sum, is ordered to be paid under the authority of this Act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of any goods belonging to any copartnership, concern, or business in the carrying on of which such charges may have become due or such offence may have been committed; and in all proceedings under this Act to recover any sum due for wages it shall be lawful in all cases of copartnership for the justices, at the hearing of any complaint for the nonpayment thereof, to make an order upon any one or more copartners for the payment of the sum appearing to be due; and in such case the service of a copy of any summons or other process, or of

any order, upon one or more of such copartners, shall be deemed to be a sufficient service upon all.

14. And it is declared and enacted, That in all cases it shall be deemed and taken to be sufficient service of any summons to be issued against any offender or offenders by any justice or justices of the peace, under the authority of this Act, if a duplicate or true copy of the same be left at or upon the place used or occupied by such offender or offenders for carrying on his, her, or their trade or business, or at the place of residence of any such offender or offenders, being at or upon any such place as aforesaid, the same being directed to such offender or offenders by his, her, or their right or assumed name or names.

15 and 16. [Both these sections repealed by schedule to Truck Act, 1887.]

17. And be it further enacted, That no conviction, order, or adjudication made by any Justices of the Peace under the provisions of this Act shall be quashed for want of form, nor be removed by certiorari or otherwise into any of his Majesty's superior Courts of Record; and no warrant of distress, or commitments in default of sufficient distress, shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

18 and 19. [Both these sections repealed by schedule to Truck Act, 1887.]

20. And be it further enacted, That nothing herein contained shall extend to any domestic servant.

21 and 22. [Both these sections repealed by schedule to Truck Act, 1887.]

23. And be it further enacted and declared, That nothing herein contained shall extend or be construed to extend to prevent any employer of any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining, or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation; nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in this Act the whole or any part of any tenement at any rent to be thereon reserved; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer; nor from making or contracting to make any stoppage or deduction from the wages of any such artificer, for or in respect of any such rent; or for or in respect of any such medicine or medical attendance; or for or in respect of such fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of any such employer: or for or in respect of any money advanced to such artificer for any such purpose as aforesaid: provided always, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer.

24. And be it further enacted and declared, That nothing herein contained shall extend or be construed to extend to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or children of such artificer, nor from deducting or contracting to deduct any sum or sums of money from the wages of such artificers for the education of any such child or children of such artificer.

[See now sections 7, 8, and 9 of Truck Act, 1887.]

25. And be it further enacted and declared, That in the meaning and for the purposes of this Act, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

26. [Commencement of Act.]

27. The provisions of this Act extend over Great Britain and Ireland.

[The schedules to the Act have been repealed by the Truck Act, 1887 (50 & 51 Vict., c. 46).]

II. TRUCK AMENDMENT ACT, 1887.

(50 & 51 VICT. CAP. 46.)

1. This Act may be cited as the Truck Amendment Act, 1887. The Act of the session of the first and second years of the reign of King William the Fourth, chapter thirty-seven, intituled "An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of the realm" (in this Act referred to as the principal Act), may be cited as the Truck Act, 1831, and that Act and this Act may be cited together as the Truck Acts, 1831 and 1887, and shall be construed together as one Act.

2. The provisions of the principal Act shall extend to, apply to, and include any workman as defined in the Employers and Workmen Act, 1875, section ten, and the expression "artificer" in the principal Act shall be construed to include every workman to whom the principal Act is extended and applied by this Act, and all provisions and enactments in the principal Act inconsistent herewith are hereby repealed.

3. Whenever by agreement, custom, or otherwise a workman is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part or on account thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge.

4. Nothing in the principal Act or this Act shall render illegal a contract with a servant in husbandry for giving him food, drink, not

being intoxicating, a cottage, or other allowances or privileges, in addition to money wages as a remuneration for his services.

5. In any action brought by a workman for the recovery of his wages, the employer shall not be entitled to any set off or counterclaim in respect of any goods supplied to the workman by any person under any order or direction of the employer, or any agent of the employer, and the employer of a workman or any agent of the employer, or any person supplying goods to the workman under any order or direction of such employer or agent, shall not be entitled to sue the workman for or in respect of any goods supplied by such employer or agent, or under such order or direction, as the case may be.

Provided that nothing in this section shall apply to anything excepted by section twenty-three of the principal Act.

6. No employer shall, directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any workman any terms as to the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid to the workman are or is to be expended, and no employer shall by himself or his agent dismiss any workman from his employment for or on account of the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid by the employer to such workman are or is expended or fail to be expended.

7. Where any deduction is made by an employer from a workman's wages for education, such workman on sending his child to any state-inspected school selected by the workman shall be entitled to have the school fees of his child at that school paid by the employer at the same rate and to the same extent as the other workmen from whose wages the like deduction is made by such employer.

In this section "state-inspected school" means any elementary school inspected under the direction of the Education Department in England or Scotland or of the Board of National Education in Ireland.

8. No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement not forming part of the condition of hiring.

9. Where deductions are made from the wages of any workmen for the education of children or in respect of medicine, medical attendance, or tools, once at least in every year the employer shall, by himself or his agent, make out a correct account of the receipts and expenditure in respect of such deductions, and submit the same to be audited by two auditors appointed by the said workmen, and shall produce to the auditors all such books, vouchers, and documents, and afford them all such other facilities as are required for such audit.

10. Where articles are made by a person at his own home, or otherwise, without the employment of any person under him except a member of his own family, the principal Act and this Act shall apply as if he were a workman, and the shopkeeper, dealer, trader, or other person buying the articles in the way of trade were his employer, and the provisions of this Act with respect to the payment of wages shall apply as if the price of an article were wages earned during the seven days next preceding the date at which any article is received from the workman by the employer.

This section shall apply only to articles under the value of £5,

knitted or otherwise, manufactured of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or of any combination thereof, or made or prepared of bone, thread, silk, or cotton lace, or of lace made of any mixed materials. Where it is made to appear to her Majesty the Queen in Council that, in the interests of persons making articles to which this section applies in any county or place in the United Kingdom, it is expedient so to do, it shall be lawful for her Majesty, by Order in Council, to suspend the operation of this section in such county or place, and the same shall accordingly be suspended, either wholly or in part, and either with or without any limitations or exceptions, according as is provided by the Order.

11. If any employer or his agent contravenes or fails to comply with any of the foregoing provisions of this Act, such employer or agent, as the case may be, shall be guilty of an offence against the principal Act, and shall be liable to the penalties imposed by section nine of that Act as if the offence were such an offence as in that section mentioned.

12.—(1.) Where an offence for which an employer is, by virtue of the principal Act or this Act, liable to a penalty has in fact been committed by some agent of the employer or other person, such agent or other person shall be liable to the same penalty as if he were the employer.

(2.) Where an employer is charged with an offence against the principal Act or this Act he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved the employer proves to the satisfaction of the court that he had used due diligence to enforce the execution of the said Acts, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the employer shall be exempt from any penalty.

When it is made to appear to the satisfaction of an inspector of factories or mines, or in Scotland a procurator fiscal, at the time of discovering the offence, that the employer had used due diligence to enforce the execution of the said Acts, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the employer, then the inspector or procurator fiscal shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

13.—(1.) Any offence against the principal Act or this Act may be prosecuted, and any penalty therefore recovered in manner provided by the Summary Jurisdiction Acts, so, however, that no penalty shall be imposed on summary conviction exceeding that prescribed by the principal Act for a second offence.

(2.) It shall be the duty of the inspectors of factories and the inspectors of mines to enforce the provisions of the principal Act and this Act within their districts so far as respects factories, workshops, and mines inspected by them respectively, and such inspectors shall for this purpose have the same powers and authorities as they respectively have for the purpose of enforcing the provisions of any Acts

relating to factories, workshops, or mines, and all expenses incurred by them under this section shall be defrayed out of moneys provided by Parliament.

(3.) In England all penalties recovered under the principal Act and this Act shall be paid into the receipt of her Majesty's Exchequer, and be carried to the Consolidated Fund.

(4.) In Scotland—

(a.) The procurators fiscal of the sheriff court shall, as part of their official duty, investigate and prosecute offences against the principal Act or this Act, and such prosecution may also be instituted in the sheriff court at the instance of any inspector of factories or inspector of mines;

(b.) All offences against the said Acts shall be prosecuted in the sheriff court.

14. In this Act, unless the context otherwise requires,—

The expression "Summary Jurisdiction Acts" means, as respects England, the Summary Jurisdiction Acts as defined by the Summary Jurisdiction Act, 1879; and, as respects Scotland, means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Acts amending the same:

Other expressions have the same meaning as in the principal Act.

15. So much of the principal Act as disqualifies any justice from acting as such under the principal Act is hereby repealed.

A person engaged in the same trade or occupation as an employer charged with an offence against the principal Act or this Act shall not act as a justice of the peace in hearing and determining such charge.

16. The provisions of the principal Act conferring powers on any overseers or overseer of the poor shall be deemed to confer those powers in the case of England on the guardians of a union, and in the case of Scotland on the inspectors of the poor.

17. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of the said schedule mentioned, without prejudice to anything heretofore done or suffered in respect thereof.

18. The principal Act, so far as it is not hereby repealed, and this Act shall extend to Ireland, subject to the following provisions:

(1.) Any offence against the principal Act or this Act may be prosecuted and any penalty therefor may be recovered in the manner provided by the Summary Jurisdiction (Ireland) Acts; (that is to say) within the Dublin Metropolitan Police District the Acts regulating the powers and duties of justices of the peace and of the police of that district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same;

(2.) Penalties recovered under the principal Act or this Act shall be applied in the manner directed by the Fines (Ireland) Act, 1851, and the Acts amending the same.

SCHEDULE.

Session and Chapter.	Title of Act.	Extent of Repeal.
12 Geo. 1. c. 34.	An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages.	Section three, and so much of section eight as applies to section three.
22 Geo. 2. c. 27.	An Act, the title of which begins with "An Act for the more effectual preventing of frauds," and ends with the words "and for the better payment of their wages."	So much of section twelve as applies to any enactment repealed by this Act.
30 Geo. 2. c. 12.	An Act, the title of which begins with the words "An Act to amend an Act," and ends with the words "payment of the workmen's wages in any other manner than in money."	Sections two and three.
57 Geo. 3. c. 115.	An Act, the title of which begins with the words "An Act to extend the provisions of an Act," and ends with the words "articles of cutlery."	The whole Act.
57 Geo. 3. c. 122.	An Act, the title of which begins with the words "An Act to extend the provisions," and ends with the words "extending the provisions of the said Acts to Scotland and Ireland."	The whole Act.
1 & 2 Will. 4. c. 37.	An Act to prohibit the payment in certain trades of wages in goods or otherwise than in the current coin of the realm.	Section ten, down to "be produced to the court and jury" inclusive; section eleven, section twelve, section fifteen, section sixteen, section eighteen, section nineteen, in section twenty the words "or servant in hus-

SCHEDULE (*continued*).

Session and Chapter.	Title of Act.	Extent of Repeal.
1 & 2 Will. 4 c. 37 (<i>continued</i>).	An Act to prohibit the payment, &c. (<i>continued</i>).	bandry'' ; section twenty-one, section twenty-two, section twenty-four from "and unless the agreement" inclusive to end of section, and section twenty-five from "all workmen" to "purposes aforesaid" both inclusive, and the schedules.

III. THE INFANTS' RELIEF ACT, 1874.

(37 & 38 VIC. CAP. 62.)

1. All contracts, whether by speciality or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied, other than contracts for necessities, and all accounts stated with infants shall be absolutely void. This enactment will not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of the common law or equity enter except such as now by law are voidable.

2. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy whether there shall or shall not be any new consideration for such promise or ratification after full age.

IV. EMPLOYERS AND WORKMEN ACT, 1875.

(38 & 39 VIC. CAP. 90.)

Preliminary.

1. This Act may be cited as the Employers and Workmen Act, 1875.

2. This Act, except so far as it authorises any rules to be made or

other thing to be done at any time after the passing of this Act, shall come into operation on the first day of September one thousand eight hundred and seventy-five.

PART I.

Jurisdiction—Jurisdiction of County Court.

3. In any proceeding before a county court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) the court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers; that is to say,

- (1.) It may adjust and set off the one against the other all such claims on the part either of the employer or of the workman arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise; and,
- (2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just; and,
- (3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

Court of Summary Jurisdiction.

4. A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dis-

pute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction—

- (1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and
- (2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case, and
- (3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

5. Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) may be heard and determined by a court of summary jurisdiction.

6. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

- (1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and,
- (2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

7. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

PART II.

Procedure.

8. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

9. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869, and may be enforced accordingly; and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the costs of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

PART III.

*Definitions and Miscellaneous.**Definitions.*

10. In this Act—

The expression “workman” does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

The expression “the Summary Jurisdiction Act” means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled “an Act to facilitate the performance of the duties of Justices of the Peace out of sessions within England and Wales with respect to summary convictions and orders,” inclusive of any Acts amending the same.

The expression “court of summary jurisdiction” means—

- (1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and
- (2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and
- (3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and
- (4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, a complaint under this Act shall be heard and determined and an order for imprisonment made by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate in respect of any act or jurisdiction which may now be done or exercised by him out of court.

11. In the case of a child, young person, or woman subject to the provisions of the Factory Acts, 1833 to 1874, any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

Application.

12. This Act in so far as it relates to apprentices shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

Saving Clause.

13. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

This Act shall not apply to seamen or to apprentices to the sea service.

PART IV.

Application of Act to Scotland.

14. This Act shall extend to Scotland, with the modifications following; that is to say,

In this Act with respect to Scotland—

The expression “county court” means the ordinary sheriff court of the county:

The expression “the court of summary jurisdiction” means the small debt court of the sheriff of the county:

The expression “sheriff” includes sheriff substitute:

The expression “instrument of apprenticeship” means indenture:

The expression “plaintiff” or “complainant” means pursuer or complainer:

The expression “defendant” includes defender or respondent:

The expression “the Summary Jurisdiction Act” means the Act of the seventh year of the reign of His Majesty King William the Fourth and the first year of the reign of Her present Majesty, chapter forty-one, intituled “An Act for the more effectual recovery of small debts in the Sheriff Courts, and for regulating the establishment of circuit courts for the trial of small debt causes by the sheriffs in Scotland,” and the Acts amending the same.

The expression “surety” means cautioner:

This Act shall be read and construed, as if for the expression “the Lord Chancellor,” wherever it occurs therein, the expression “the Court of Session by act of sederunt” were substituted.

All jurisdictions, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs in their ordinary or small debt courts, as the case may be, who shall have full power to make any order on any summons, petition, complaint, or other proceeding under this Act, that any county court or court of summary jurisdiction is empowered to make on any complaint or other proceeding under this Act.

Any decree or order pronounced or made by a sheriff under this Act shall be enforced in the same manner and under the same conditions in and under which a decree or order pronounced or made by him in his ordinary or small debt court, as the case may be, is enforced.

PART V.

Application of Act to Ireland.

15. This Act shall extend to Ireland, with the modifications following; that is to say,

The expression "county court" shall be construed to mean civil bill court;

The expression "Lord Chancellor" shall be construed to mean the Lord Chancellor of Ireland:

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same:

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act:

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions:

The expression "fifth section of the Debtors Act, 1869," shall be construed to mean "sixth section of Debtors Act (Ireland), 1872."

V. TRADE UNION ACT AMENDMENT ACT, 1876.

(39 & 40 VICT. CAP. 22.)

1. This Act and the Trade Union Act, 1871, hereafter termed the principal Act, shall be construed as one Act and may be cited together as the "Trade Union Acts, 1871 and 1876," and this Act may be cited separately as the "Trade Union Act Amendment Act, 1876."

2. Notwithstanding anything in section five of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of section twenty-eight of the Friendly Societies Act, 1875.

3. Whereas by section eight of the principal Act it is enacted that "the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch," the said section shall be read and construed as if immediately after the hereinbefore recited words there were inserted the words "or of the trustees of the trade union if the rules of the trade union so provide."

4. When any person being or having been a trustee of a trade union or of any branch of a trade union, and, whether appointed before or after the legal establishment thereof in whose name any stock belonging to such union or branch, transferrable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain or Ireland respectively, or becomes bankrupt, or files any petition or executes any deed for liquidation of his affairs by assignment or arrangement or for composition with his creditors, or become a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on the application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch, and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee or if such trustee refuse, or be unable to make such transfer and the registrar so direct, then by the Accountant-General or Deputy, or Assistant Accountant-General of the Bank of England or Bank of Ireland as the case may be, and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any persons injuriously affected thereby.

5. The jurisdiction conferred in the case of certain offences by section twelve of the principal Act, upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

6. Trade unions carrying on or intending to carry on business in more than one country, shall be registered in the country in which their registered office is situate; but copies of the rules of such unions and of all amendments of the same shall, when registered, be sent to the registrar of each of the other countries to be recorded by him and until such rules be so recorded, the union shall not be entitled to any of the privileges of this Act or the principal Act in the country in which such rules have not been recorded, and until such amendments of rules be recorded, the same shall not take effect in such country. In this section "country" means England, Scotland, or Ireland.

7. Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to Friendly Societies: The said Acts (or the amending Acts) shall not apply or be deemed to have applied to trade unions registered, or to be registered under the principal Act.

8. No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the Chief Registrar of Friendly Societies; or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the Assistant Registrar for Scotland or Ireland; and in the following cases—

- (1.) At the request of the trade union, to be evinced in such manner as such Chief or Assistant Registrar shall from time to time direct;

(2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud, or mistake, or that the registration of the trade union has become void under section six of the Trade Union Act, 1871, or that such trade union wilfully, and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union Acts, or has ceased to exist. Not less than two months' previous notice in writing specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the Chief or Assistant Registrar to cancel the same forthwith), shall be given by the Chief or Assistant Registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request). A trade union whose certificate of registration has been withdrawn or cancelled, shall from the time of such withdrawal or cancelling absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

9. A person under the age of twenty-one but above the age of sixteen may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

10. A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at or sent to the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator) to whom any moneys payable on the death of such member not exceeding £50 shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly sent or delivered; and on receiving satisfactory proof of the death of the nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

11. A trade union may with the approval in writing of the Chief Registrar of Friendly Societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the Assistant Registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members. No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

12. Any two or more trade unions may by the consent of not less than two-thirds of the members of each or every such trade union

become amalgamated together as one trade union with or without any dissolution or division of the funds of such trade unions or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

13. Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with; and in the case of an amalgamation, signed by seven members and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamation have been complied with, shall be sent to the Central Office established by the Friendly Societies Act, 1875, and registered there; and until such change of name or amalgamation is so registered the same shall not take effect.

14. The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same shall be sent within fourteen days thereafter to the Central Office hereinbefore mentioned; or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the Assistant-Registrar for Scotland or Ireland respectively, and shall be registered by them: Provided, that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

15. A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of management of the union, unless proved to have been ignorant of or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than one pound and not more than five pounds, recoverable at the suit of the Chief or any Assistant Registrar of Friendly Societies, or of any person aggrieved, and to an additional penalty of the like amount for each week during which the omission continues.

16. So much of section twenty-three of the principal Act as defines the term "trade union," except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows: The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not if the principal Act had not been passed have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

VI. FACTORY AND WORKSHOP ACT, 1878.

(41 VIC. CAP. 16.)

Preliminary.

1. This Act may be cited as the Factory and Workshop Act, 1878.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act: Provided that at any time after the passing of this Act, any appointment, regulation, or order may be made, any notice issued, form prescribed, and act done which appears to a Secretary of State necessary or proper to be made, issued, prescribed, or done for the purpose of bringing this Act into operation at the commencement thereof.

PART I.

GENERAL LAW RELATING TO FACTORIES AND WORKSHOPS.

(1.) *Sanitary Provisions.*

3. A factory and a workshop shall be kept in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance.

A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

4. Where it appears to an inspector under this Act that any act, neglect, or default in relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of such act, neglect, or default to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law.

An inspector under this Act may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority.

[See now Factory and Workshop Act, 1891 (54 & 55 Vic. c. 75), sections 1, 2, 3, and 4 *infra*.]

(2.) *Safety.*

5. With respect to the fencing of machinery in a factory the following provisions shall have effect:

- (1.) Every hoist or teagle near to which any person is liable to pass or to be employed, and every fly-wheel directly connected with the steam or water or other mechanical power, whether in the engine house or not, and every part of a steam engine and water wheel, shall be securely fenced [see now section 6 of 54 & 55 Vic. c. 75, *infra*]; and
- (2.) Every wheel-race not otherwise secured shall be securely fenced close to the edge of the wheel-race; and
- (3.) Every part of the mill gearing shall either be securely fenced or be in such position or of such construction as to be equally safe to every person employed in the factory as it would be if it were securely fenced; and
- (4.) All fencing shall be constantly maintained in an efficient state while the parts required to be fenced are in motion or use for the purpose of any manufacturing process. [See now section 6 of 54 & 55 Vic. c. 75, *infra*.]

A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

[Sections 6, 7, and 8 of 41 Vic. c. 16, relating to fencing machinery, vats, pans, and fixing of grindstones have been repealed by 54 & 55 Vic. c. 75.]

See *infra* as to escape from fire, section 7 of 54 & 55 Vic. c. 75; and as to special rules and regulations, sections 8, 9, 10, 11, and 12 of same Act.]

9. A child shall not be allowed to clean any part of the machinery in a factory while the same is in motion by the aid of steam, water, or other mechanical power.

A young person or woman shall not be allowed to clean such part of the machinery in a factory as is mill-gearing while the same is in motion for the purpose of propelling any part of the manufacturing machinery.

A child, young person, or woman shall not be allowed to work between the fixed and traversing part of any self-acting machine while the machine is in motion by the action of steam, water, or other mechanical power.

A child, young person, or woman allowed to clean or to work in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.

[See now section 17 of 54 & 55 Vic. c. 75, *infra*.]

(3.) *Employment and Meal Hours.*

10. A child, young person, or woman shall not be employed in a factory or a workshop except during the period of employment hereinafter mentioned.

11. With respect to the employment of young persons and women in a textile factory the following regulations shall be observed:

- (1.) The period of employment, except on Saturday, shall either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening; and
- (2.) The period of employment on Saturday shall begin either at six o'clock or at seven o'clock in the morning; and

- (3.) Where the period of employment on Saturday begins at six o'clock in the morning, that period—
 - (a.) If not less than one hour is allowed for meals, shall end at one o'clock in the afternoon as regards employment in any manufacturing process, and at half-past one o'clock in the afternoon as regards employment for any purpose whatever; and
 - (b.) If less than one hour is allowed for meals, shall end at half-an-hour after noon as regards employment in any manufacturing process, and at one o'clock in the afternoon as regards employment for any purpose whatever; and
 - (4.) Where the period of employment on Saturday begins at seven o'clock in the morning, that period shall end at half-past one o'clock in the afternoon as regards any manufacturing process, and at two o'clock in the afternoon as regards employment for any purpose whatever; and
 - (5.) There shall be allowed for meals during the said period of employment in the factory—
 - (a.) on every day except Saturday not less than two hours, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon; and
 - (b.) on Saturday not less than half-an-hour; and
 - (6.) A young person or woman shall not be employed continuously for more than four hours and a half, without an interval of at least half-an-hour for a meal.
12. With respect to the employment of children in a textile factory the following regulations shall be observed:
- (1.) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only; and
 - (2.) The period of employment for a child in a morning set shall, except on Saturday, begin at the same hour as if the child were a young person, and end at one o'clock in the afternoon, or, if the dinner time begins before one o'clock, at the beginning of dinner time; and
 - (3.) The period of employment for a child in an afternoon set shall, except on Saturday, begin at one o'clock in the afternoon, or at any later hour at which the dinner time terminates, and end at the same hour as if the child were a young person; and
 - (4.) The period of employment for any child on Saturday shall begin and end at the same hour as if the child were a young person; and
 - (5.) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on two successive Saturdays, nor on Saturday in any week if on any other day in the same week his period of employment has exceeded five hours and a half; and
 - (6.) When a child is employed on the alternate day system the period of employment for such child and the time allowed for meals shall be the same as if the child were a young

person, but the child shall not be employed on two successive days, and shall not be employed on the same day of the week in two successive weeks; and

- (7.) A child shall not on either system be employed continuously for any longer period than he could be if he were a young person without an interval of at least half-an-hour for a meal.

13. With respect to the employment of young persons and women in a non-textile factory, and of young persons in a workshop, the following regulations shall be observed:

- (1.) The period of employment, except on Saturday, shall (save as is in this Act specially excepted) either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening; and

- (2.) The period of employment on Saturday shall (save as is in this Act specially excepted) begin at six o'clock in the morning or at seven o'clock in the morning, and end at two o'clock in the afternoon; and

- (3.) There shall be allowed for meals during the said period of employment in the factory or workshop—

(a.) on every day except Saturday not less than one hour and a half, of which one hour at the least, either at the same time or at different times, shall be before three o'clock in the afternoon; and

(b.) on Saturday not less than half-an-hour; and

- (4.) A young person or a woman in a non-textile factory and a young person in a workshop shall not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.

14. With respect to the employment of children in a non-textile factory and a workshop the following regulations shall be observed:

- (1.) Children shall not be employed except either on the system of employment in morning and afternoon sets, or (in a factory or workshop in which not less than two hours are allowed for meals on every day except Saturday) on the system of employment on alternate days only; and

- (2.) The period of employment for a child in the morning set on every day, including Saturday, shall begin at six or seven o'clock in the morning and end at one o'clock in the afternoon, or, if the dinner time begins before one o'clock, at the beginning of dinner time; and

- (3.) The period of employment for a child in an afternoon set on every day, including Saturday, shall begin at one o'clock in the afternoon, or at any hour later than half-past twelve o'clock at which the dinner time terminates, and end on Saturday at two o'clock in the afternoon, and on any other day at six or seven o'clock in the evening, according as the period of employment for children in the morning set began at six or seven o'clock in the morning; and

- (4.) A child shall not be employed in two successive periods of seven days in a morning set, nor in two successive periods of seven days in an afternoon set, and a child shall not be employed on Saturday in any week in the same set in

which he has been employed on any other day of the same week ; and

(5.) When a child is employed on the alternate day system—

- (a.) The period of employment for such child shall, except on Saturday, either begin at six o'clock in the morning and end at six o'clock in the evening, or begin at seven o'clock in the morning and end at seven o'clock in the evening ; and
- (b.) The period of employment for such child shall on Saturday begin at six or seven o'clock in the morning, and end at two o'clock in the afternoon ; and
- (c.) There shall be allowed to such child for meals during the said period of employment not less, on any day except Saturday, than two hours, and on Saturday than half an hour ; but
- (d.) The child shall not be employed in any manner on two successive days, and shall not be employed on the same day of the week in two successive weeks ; and

(6.) A child shall not on either system be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.

15. With respect to the employment of women in workshops, the following regulations shall be observed :

- (1.) In a workshop which is conducted on the system of employing therein children and young persons, or either of them, a woman shall not be employed except during the same period and subject to the same restrictions as if she were a young person ; and the regulations of this Act with respect to the employment of young persons in a workshop shall apply accordingly to the employment of women in that workshop.

[See now section 13 of 54 & 55 Vic. c. 75, *infra*.]

A workshop shall not be deemed to be conducted on the system of not employing therein either children or young persons until the occupier has served on an inspector notice of his intention to conduct his workshop on that system.

16. Where persons are employed at home, that is to say, in a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used in aid of the manufacturing process carried on there, and in which the only persons employed are members of the same family dwelling there, the foregoing regulations of this Act with respect to the employment of children, young persons, and women shall not apply to such factory or workshop, and in lieu thereof the following regulations shall be observed therein :

- (1.) A child or young person shall not be employed in the factory or workshop except during the period of employment hereinafter mentioned ; and
- (2.) The period of employment for a young person shall, except on Saturday, begin at six o'clock in the morning and end at nine o'clock in the evening, and shall on Saturday begin

at six o'clock in the morning and end at four o'clock in the afternoon; and

- (3.) There shall be allowed to every young person for meals and absence from work during the period of employment not less, except on Saturday, than four hours and a half, and on Saturday than two hours and a half; and
- (4.) The period of employment for a child on every day either shall begin at six o'clock in the morning and end at one o'clock in the afternoon, or shall begin at one o'clock in the afternoon and end at eight o'clock in the evening or on Saturday at four o'clock in the afternoon; and for the purpose of the provisions of this Act respecting education such child shall be deemed, according to circumstances, to be employed in a morning or afternoon set; and
- (5.) A child shall not be employed before the hour of one in the afternoon in the two successive periods of seven days, nor after that hour in two successive periods of seven days, and a child shall not be employed on Saturday in any week before the hour of one in the afternoon, if on any other day in the same week he has been employed before that hour, nor after that hour if on any other day of the same week he has been employed after that hour; and
- (6.) A child shall not be employed continuously for more than five hours without an interval of at least half-an-hour for a meal.

17. With respect to meals the following regulations shall (save as is in this Act specially excepted) be observed in a factory and workshop:

- (1.) All children, young persons, and women employed therein shall have the times allowed for meals at the same hour of the day; and
- (2.) A child, young person, or woman shall not during any part of the times allowed for meals in the factory or workshop, be employed in the factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is then being carried on.

[For section 18 now read section 15 of 54 & 55 Vic. c. 75, *infra*.]

19. The occupier of a factory or workshop may from time to time fix within the limits allowed by this Act, and shall (save as is in this Act specially excepted) specify in a notice affixed in the factory or workshop, the period of employment, the times allowed for meals, and whether the children are employed on the system of morning and afternoon sets or of alternate days.

The period of employment and the times allowed for meals in the factory or workshop shall be deemed to be the period and the times specified in the notice affixed in the factory or workshop; and all the children in the factory or workshop shall be employed either on the system of morning and afternoon sets or on the system of alternate days according to the system for the time being specified in such notice:

Provided that a change in such period or times or system of employment shall not be made until after the occupier has served on an inspector and affixed in the factory or workshop notice of his intention to make such change, and shall not be made oftener than

once a quarter, unless for special cause allowed in writing by an inspector.

20. A child under the age of ten years shall not be employed in a factory or workshop. [See, however, section 18 of 54 & 55 Vic. c. 75, *infra*.]

21. A child, young person, or woman shall not (save as is in this Act specially excepted) be employed on Sunday in a factory or workshop.

(4.) *Holidays.*

22. The occupier of a factory or of a workshop shall (save as is in this Act specially excepted) allow to every child, young person, and woman employed therein the following holidays; that is to say,

(1.) The whole of Christmas Day, and the whole either of Good Friday or, if it is so specified by the occupier in the notice affixed in the factory or workshop, of the next public holiday under the Holidays Extension Act, 1875; and in addition

(2.) Eight half holidays in every year, but a whole holiday may be allowed in lieu of two such half holidays; and

(3.) At least half of the said half holidays or whole holidays shall be allowed between the fifteenth day of March and the first day of October in every year; and

[For sub-section 4 now read section 16 (4) of 54 & 55 Vic. c. 75, *infra*.]

(5.) A half holiday shall comprise at least one half of the period of employment for young persons and women on some day other than Saturday.

A child, young person, or woman who—

(a.) On a whole holiday fixed by or in pursuance of this section for a factory or workshop is employed in the factory or workshop, or

(b.) On a half holiday fixed in pursuance of this section for a factory or workshop is employed in the factory or workshop during the portion of the period of employment assigned for such half holiday,

shall be deemed to be employed contrary to the provisions of this Act.

If in a factory or workshop such whole holidays or half holidays as required by this section are not fixed in conformity therewith, the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

[See, further, sections 33 and 34 of 54 & 55 Vic. c. 75, *infra*.]

(5.) *Education of Children.*

23. The parent of a child employed in a factory or in a workshop shall cause that child to attend some recognised efficient school (which school may be selected by such parent), as follows:

(1.) The child, when employed in a morning or afternoon set, shall in every week, during any part of which he is so employed, be caused to attend on each work day for at least one attendance; and

(2.) The child, when employed on the alternate day system, shall on each work day preceding each day of employment in

the factory or workshop be caused to attend for at least two attendances;

- (3.) An attendance for the purposes of this section shall be an attendance as defined for the time being by a Secretary of State with the consent of the Education Department, and be between the hours of eight in the morning and six in the evening:

Provided that—

- (a.) A child shall not be required by this Act to attend school on Saturday or on any holiday or half holiday allowed under this Act in the factory or workshop in which the child is employed; and
- (b.) The non-attendance of the child shall be excused on every day on which he is certified by the teacher of the school to have been prevented from attending by sickness or other unavoidable cause, also when the school is closed during the ordinary holidays or for any other temporary cause; and
- (c.) Where there is not within the distance of two miles, measured according to the nearest road, from the residence of the child a recognised efficient school which the child can attend, attendance at a school temporarily approved in writing by an inspector under this Act, although not a recognised efficient school, shall for the purposes of this Act be deemed attendance at a recognised efficient school until such recognised efficient school as aforesaid is established, and with a view to such establishment the inspector shall immediately report to the Education Department every case of the approval of a school by him under this section.

A child who has not in any week attended school for all the attendances required by this section shall not be employed in the following week until he has attended school for the deficient number of attendances.

The Education Department shall from time to time, by the publication of lists or by notices or otherwise as they think expedient, provide for giving to all persons interested information of the schools in each school district which are recognised efficient schools.

24. The occupier of a factory or workshop in which a child is employed shall on Monday in every week (after the first week in which such child began to work therein), or on some other day appointed for that purpose by an inspector, obtain from the teacher of the recognised efficient school attended by the child, a certificate (according to the prescribed form and directions) respecting the attendance of such child at school in accordance with this Act.

The employment of a child without obtaining such certificate as is required by this section shall be deemed to be employment of a child contrary to the provisions of this Act.

The occupier shall keep every such certificate for two months after the date thereof, if the child so long continues to be employed in his factory or his workshop, and shall produce the same to an inspector when required during that period.

25. The board authority or persons who manage a recognised efficient school attended by a child employed in a factory or workshop,

or some person authorised by such board authority or person, may apply in writing to the occupier of the factory or workshop to pay a weekly sum specified in the application, not exceeding threepence and not exceeding one twelfth part of the wages of the child, and after that application the occupier, so long as he employs the child, shall be liable to pay to the applicants, while the child attends their school, the said weekly sum, and the sum may be recovered as a debt, and the occupier may deduct the sum so paid by him from the wages payable for the services of the child.

26. When a child of the age of thirteen years has obtained from a person authorised by the Education Department a certificate of having attained such standard of proficiency in reading, writing, and arithmetic, or such standard of previous due attendance at a certified efficient school, as hereinafter mentioned, that child shall be deemed to be a young person for the purposes of this Act.

The standards of proficiency and due attendance for the purposes of this section shall be such as may be from time to time fixed for the purposes of this Act by a Secretary of State, with the consent of the Education Department, and the standards so fixed shall be published in the London Gazette, and shall not have effect until the expiration of at least six months after such publication.

Attendance at a certified day industrial school shall be deemed for the purposes of this section to be attendance at a certified efficient school.

(6.) Certificates of Fitness for Employment.

27. In a factory a child or a young person under the age of sixteen years shall not be employed for more than seven, or if the certifying surgeon for the district resides more than three miles from the factory thirteen, work days, unless the occupier of the factory has obtained a certificate, in the prescribed form, of the fitness of such child or young person for employment in that factory.

A certificate of fitness for employment for the purposes of this Act shall be granted by the certifying surgeon for the district, and shall be to the effect that he is satisfied, by the production of a certificate of birth or other sufficient evidence, that the person named in the certificate of fitness is of the age therein specified, and has been personally examined by him, and is not incapacitated by disease or bodily infirmity for working daily for the time allowed by law in the factory named in the certificate.

28. In order to enable occupiers of workshops to better secure the observance of this Act, and prevent the employment in their workshops of children and young persons under the age of sixteen years who are unfitted for that employment, an occupier of a workshop is hereby authorised to obtain, if he thinks fit, from the certifying surgeon for the district, certificates of the fitness of children and of young persons under the age of sixteen years for employment in his workshop, in like manner as if that workshop were a factory, and the certifying surgeon shall examine the children and young persons, and grant certificates accordingly.

29. Where an inspector is of opinion that a child or a young person under the age of sixteen years is by disease or bodily infirmity incapacitated for working daily for the time allowed by law in the factory or workshop in which he is employed, he may serve written

notice thereof on the occupier of the factory or workshop requiring that the employment of such child or young person be discontinued from the period named therein, not being less than one nor more than seven days after the service of such notice, and the occupier shall not continue after the period named in such notice to employ such child or young person (notwithstanding a certificate of fitness has been previously obtained for such child or young person), unless the certifying surgeon for the district has, after the service of the notice, personally examined such child or young person, and has certified that such child or young person is not so incapacitated as aforesaid.

30. All factories and workshops in the occupation of the same occupier, and in the district of the same certifying surgeon, or any of them, may be named in the certificate of fitness for employment, if the surgeon is of opinion that he can truly give the certificate for employment therein.

The certificate of birth (which may be produced to a certifying surgeon) shall either be a certified copy of the entry in the register of births, kept in pursuance of the Acts relating to the registration of births, of the birth of the child or young person (whether such copy be obtained in pursuance of the Elementary Education Act, 1876, or otherwise), or be a certificate from a local authority within the meaning of the Elementary Education Act, 1876, to the effect that it appears from the returns transmitted to such authority in pursuance of the said Act by the registrar of births and deaths that the child was born at the date named in the certificate.

Where a certificate of fitness for employment is to the effect that the certifying surgeon has been satisfied of the age of a child or young person by evidence other than the production of a certificate of birth, an inspector may, by notice in writing, annul the surgeon's certificate, if he has reasonable cause to believe that the real age of the child or young person named in it is less than that mentioned in the certificate, and thereupon that certificate shall be of no avail for the purposes of this Act.

When a child becomes a young person a fresh certificate of fitness must be obtained.

The occupier shall, when required, produce to an inspector at the factory or workshop in which a child or young person is employed, the certificate of fitness of such child or young person for employment, which he is required to obtain under this Act.

[See as to certificates of birth, section 30 of 54 & 55 Vic. c. 75, *infra*.]

(7.) *Accidents.*

31. Where there occurs in a factory or a workshop any accident which either—

- (a.) causes loss of life to a person employed in the factory or in the workshop, or
- (b.) causes bodily injury to a person employed in the factory or in the workshop, and is produced either by machinery moved by steam, water, or other mechanical power, or through a vat, pan, or other structure filled with hot liquid or molten metal or other substance, or by explosion, or by escape of gas, steam, or metal, and is of such a nature as to prevent the person injured by it from returning to his work in the

factory or workshop within forty-eight hours after the occurrence of the accident, written notice of the accident shall forthwith be sent to the inspector and to the certifying surgeon for the district, stating the residence of the person killed or injured, or the place to which he may have been removed, and if any such notice is not sent the occupier of the factory or workshop shall be liable to a fine not exceeding five pounds.

If any such accident as aforesaid occurs to a person employed in an iron mill or blast furnace, or other factory or workshop where the occupier is not the actual employer of the person killed or injured, the actual employer shall immediately report the same to the occupier, and in default shall be liable to a fine not exceeding five pounds.

A notice of an accident, of which notice is required by section sixty-three of the Explosives Act, 1875, to be sent to a government inspector, need not be sent to the certifying surgeon in pursuance of this section.

32. Where a certifying surgeon receives in pursuance of this Act notice of an accident in a factory or a workshop, he shall with the least possible delay proceed to the factory or workshop, and make a full investigation as to the nature and cause of the death or injury caused by that accident, and within the next twenty-four hours send to the inspector a report thereof.

The certifying surgeon, for the purpose only of an investigation under this section, shall have the same powers as an inspector, and shall also have power to enter any room in a building to which the person killed or injured has been removed.

There shall be paid to the said surgeon for the investigation such fee, not exceeding ten or less than three shillings, as a Secretary of State considers reasonable, which fee shall be paid as expenses incurred by a Secretary of State in the execution of this Act.

[As to other regulations on accidents, see section twenty-two of 54 & 55 Vic. c. 75, *infra*; and as to Scotland, section thirty-three, *infra*.]

PART II.

SPECIAL PROVISIONS RELATING TO PARTICULAR CLASSES OF FABRICIES AND WORKSHOPS.

(1.) *Special Provisions for Health in Certain Factories and Workshops.*

33. For the purpose of securing the observance of the requirements of this Act as to cleanness in every factory and workshop, all the inside walls of the rooms of a factory or workshop, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of a factory or workshop, if they have not been painted with oil or varnished once at least within seven years, shall be limewashed once at least within every fourteen months, to date from the period when last limewashed; and if they have been so painted or varnished shall be washed with hot water and soap once at least within every fourteen months, to date from the period when last washed.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Where it appears to a Secretary of State that in any class of factories or workshops, or parts thereof, the regulations in this section are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by order made under this part of this Act, grant to such class of factories or workshops, or parts thereof, a special exception that the regulations in this section shall not apply thereto.

34. Where a bakehouse is situate in any city, town, or place containing, according to the last published Census for the time being, a population of more than five thousand persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months; where limewashed the limewashing shall be renewed once at least in every six months.

A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act.

35. Where a bakehouse is situate in any city, town, or place containing, according to the last published Census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place, unless it is constructed as follows; that is to say,

- unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

- unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

Any person who lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for every subsequent offence five pounds.

36. If in a factory or workshop where grinding, glazing, or polishing on a wheel, or any process is carried on, by which dust is generated and inhaled by the workers to an injurious extent, it appears to an inspector that such inhalation could be to a great extent prevented by the use of a fan or other mechanical means, the inspector may direct a fan or other mechanical means of a proper construction for preventing such inhalation to be provided within a reasonable time; and if the same is not provided, maintained, and used, the factory or workshop shall be deemed not to be kept in conformity with this Act.

37. A child, young person, or woman shall not be employed in any part of a factory in which wet-spinning is carried on, unless sufficient means be employed and continued for protecting the workers from

being wetted, and, where hot water is used, for preventing the escape of steam into the room occupied by the workers.

A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

(2.) *Special Restrictions as to Employment, Meals, and Certificates of Fitness.*

38. A child or young person shall not, to the extent mentioned in the First Schedule to this Act, be employed in the factories or workshops or parts thereof named in that schedule.

Notice of the prohibition in this section shall be affixed in a factory or workshop to which it applies.

39. A child, young person, or woman shall not be allowed to take a meal or to remain during the times allowed for meals in the parts of factories or workshops to which this section applies; and a child, young person, or woman allowed to take a meal or to remain in contravention of this section shall be deemed to be employed contrary to the provisions of this Act.

Notice of the prohibition in this section shall be affixed in a factory or workshop to which it applies.

This section applies to the parts of factories or workshops named in the Second Schedule to this Act.

Where it appears to a Secretary of State that by reason of the nature of the process in any class of factories or workshops or parts thereof not named in the said schedule, the taking of meals therein is specially injurious to health, he may, if he thinks fit, by order made under this part of this Act, extend the prohibition in this section to the said class of factories or workshops or parts thereof.

If the prohibition in this section is proved to the satisfaction of a Secretary of State to be no longer necessary for the protection of the health of children, young persons, and women in any class of factories or workshops or parts thereof to which the prohibition has been extended by an order, he may, by an order made under this part of this Act, rescind the order of extension, without prejudice nevertheless to the subsequent making of another order.

40. In print works and bleaching and dyeing works the period of employment for a child, young person, and woman, and the times allowed for meals, shall be the same as if the said works were a textile factory, and the regulations of this Act with respect to the employment of children, young persons, and women in a textile factory shall apply accordingly, as if print works and bleaching and dyeing works were textile factories; save that nothing in this section shall prevent the continuous employment of a child, young person, or woman in the said works without an interval of half an hour for a meal, for the period allowed by this Act in a non-textile factory.

41. Where it appears to a Secretary of State that by reason of special circumstances affecting any class of workshops it is expedient for protecting the health of the children and of the young persons under the age of sixteen years employed therein, to extend thereto the prohibition in this section mentioned, he may, by order made under this part of this Act, extend to such class of workshops the prohibition in this Act of the employment of children and young persons under the age of sixteen years without a certificate of the

fitness of such child or young person for employment, and thereupon the provisions of this Act with respect to certificates of fitness for employment shall apply to the class of workshops named in the order in like manner as if they were factories.

If the prohibition is proved to the satisfaction of the Secretary of State to be no longer necessary for the protection of the health of the children and the young persons under the age of sixteen years employed in any class of workshops to which it has been extended under this section, he may by order made under this part of this Act rescind the order of extension, without prejudice nevertheless to the subsequent making of another order.

(3.) *Special Exceptions relaxing General Law in certain Factories and Workshops.*

(a.) *Period of Employment.*

42. In the factories and workshops or parts thereof to which this exception applies the period of employment for young persons and women, if so fixed by the occupier and specified in the notice, may, except on Saturday, begin at eight o'clock in the morning and end at eight o'clock in the evening, and on Saturday may begin at eight o'clock in the morning and end at four o'clock in the afternoon, or where it begins at seven o'clock in the morning may end at three o'clock in the afternoon; and the period of employment for a child in a morning set may begin at the same hour, and the period of employment for a child in an afternoon set may end at the same hour.

This exception applies to the factories and workshops and parts thereof specified in Part One of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops or part thereof, either generally or when situate in any particular locality, require the extension thereto of this exception, and that the extension can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act extend this exception accordingly.

43. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops or parts thereof, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that such grant can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act grant to such class of factories or workshops or parts thereof a special exception, that the period of employment for young persons and women therein, if so fixed by the occupier and specified in the notice, may on any day except Saturday begin at nine o'clock in the morning and end at nine o'clock in the evening, and in such case the period of employment for a child in a morning set shall begin at nine o'clock in the morning, and the period of employment for a child in an afternoon set shall end at eight o'clock in the evening.

44. The regulations of this Act with respect to the employment of young persons in textile factories shall not prevent the employment,

in the part of a textile factory in which a machine for the manufacture of lace is moved by steam, water, or other mechanical power, of any male young person above the age of sixteen years between four o'clock in the morning and ten o'clock in the evening, if he is employed in accordance with the following conditions; namely,

- (a.) Where such young person is employed on any day before the beginning or after the end of the ordinary period of employment in the factory, there shall be allowed him for meals and absence from work between the above-mentioned hours of four in the morning and ten in the evening not less than nine hours; and
- (b.) Where such young person is employed on any day before the beginning of the ordinary period of employment in the factory, he shall not be employed on the same day after the end of that period; and
- (c.) Where such young person is employed on any day after the end of the ordinary period of employment in the factory, he shall not be employed next morning before the beginning of the ordinary period of employment.

For the purpose of this exception the ordinary period of employment in the factory means the period of employment for young persons under the age of sixteen years or women in the factory, or if none are employed means such period as can under this Act be fixed for the employment of such young persons and women in the factory, and notice of such period shall be affixed in the factory.

45. The regulations of this Act with respect to the employment of young persons in non-textile factories or workshops shall not prevent the employment, in the part of a bakehouse in which the process of baking bread is carried on, of any male young person above the age of sixteen years between five o'clock in the morning and nine o'clock in the evening, if he is employed in accordance with the following conditions; namely,

- (a.) Where such young person is employed on any day before the beginning or after the end of the ordinary period of employment in the bakehouse, there shall be allowed him for meals and absence from work between the above-mentioned hours of five in the morning and nine in the evening not less than seven hours; and
- (b.) Where such young person is employed on any day before the beginning of the ordinary period of employment in the bakehouse, he shall not be employed after the end of that period on the same day; and
- (c.) Where such young person is employed on any day after the end of the ordinary period of employment in the bakehouse, he shall not be employed next morning before the beginning of the ordinary period of employment.

For the purpose of this exception the ordinary period of employment in the bakehouse means the period of employment for young persons under the age of sixteen years or women in the bakehouse, or if none are employed, means such period as can under this Act be fixed for the employment of such young persons and women in the bakehouse, and notice of such period shall be affixed in the bakehouse.

Where it is proved to the satisfaction of the Secretary of State that

the exigencies of the trade carried on in bakehouses, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, and that such grant can be made without injury to the health of the male young persons affected thereby, he may by order made under this part of this Act grant to bakehouses, or to bakehouses situate in the said locality, a special exception permitting the employment of male young persons of sixteen years of age and upwards as if they were no longer young persons.

46. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require some other day in the week to be substituted for Saturday as regards the hour at which the period of employment for children, young persons, and women is required by this Act to end on Saturday, he may by order made under this part of this Act grant to such class of factories or workshops a special exception, authorising the occupier of every such factory or workshop to substitute by a notice affixed in his factory or workshop some other day for Saturday, and in such case this Act shall apply in such factory or workshop in like manner as if the substituted day were Saturday, and Saturday were an ordinary work day.

47. In the process of Turkey red dyeing, nothing in Part One of this Act shall prevent the employment of young persons and women on Saturday until half-past four o'clock in the afternoon, but the additional number of hours so worked shall be computed as part of the week's limit of work, which shall in no case be exceeded.

48. In any of the textile factories to which this exception applies, if the period of employment for young persons and women, as fixed by the occupier and specified in the notice, begins at the hour of seven in the morning, and the whole time between that hour and eight o'clock is allowed for meals, the regulations of this Act with respect to the employment of children, young persons, and women shall not prevent a child, young person, or woman, between the first day of November and the last day of March next following, being employed continuously, without an interval of at least half an hour for a meal, for the same period as if the factory were a non-textile factory.

This exception applies to the textile factories specified in Part Seven of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of textile factories, either generally or when situate in any particular locality, the customary habits of the persons employed therein require the extension thereto of this exception, and that the manufacturing process carried on therein is of a healthy character, and the extension can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act extend this exception accordingly.

49. Where it is proved to the satisfaction of a Secretary of State that the customs or exigencies of the trade carried on in any class of non-textile factories or workshops, either generally or when situate in any particular locality, require that the special exception hereafter in this section mentioned should be granted, he may by order made under this part of this Act grant to such class of factories or work-

shops a special exception, authorising the occupier of any such factory or workshop to allow all or any of the half holidays, or whole holidays in lieu of them, on different days to any of the children, young persons, and women employed in his factory or workshop, or to any sets of such children, young persons, and women, and not on the same days.

50. Where the occupier of a factory or workshop is a person of the Jewish religion, the regulations of this Act with respect to the employment of young persons and women shall not prevent him—

- (1.) If he keeps his factory or workshop closed on Saturday until sunset, from employing young persons and women on Saturday from after sunset until nine o'clock in the evening ; or
- (2.) If he keeps his factory or workshop closed on Saturday both before and after sunset, from employing young persons and women one hour on every other day in the week (not being Sunday), in addition to the hours allowed by this Act, so that such hour be at the beginning or end of the period of employment, and be not before six o'clock in the morning or after nine o'clock in the evening ; or
- (3.) If all the children, young persons, and women in his factory or workshop are of the Jewish religion, from giving them, if so specified in a notice affixed in the factory or workshop as by this Act provided, any two public holidays under the Holidays Extension Act, 1875, in lieu of Christmas Day and Good Friday, but in that case such factory or workshop shall not be open for traffic on Christmas Day or Good Friday.

51. No penalty shall be incurred by any person in respect of any work done on Sunday in a factory or workshop by a young person or woman of the Jewish religion, subject to the following conditions :

- (1.) The occupier of the factory or workshop shall be of the Jewish religion ; and
- (2.) The factory or workshop shall be closed on Saturday and shall not be open for traffic on Sunday ; and
- (3.) The occupier shall not avail himself of the exception authorising the employment of young persons and women on Saturday evening, or for an additional hour during any other day of the week.

Where the occupier avails himself of this exception, this Act shall apply to the factory or workshop in like manner as if in the provisions thereof respecting Sunday the word Saturday were substituted for Sunday, and in the provisions thereof respecting Saturday the word Sunday, or, if the occupier so specify in the notice, the word Friday were substituted for Saturday.

(b.) *Meal Hours.*

52. The provisions of this Act which require that all the children, young persons, and women employed in a factory or workshop shall have the times allowed for meals at the same hour of the day shall not apply in the cases mentioned in Part Two of the Third Schedule to this Act.

The provisions of this Act which require that a child, young person,

and woman shall not, during any part of the times allowed for meals in a factory or workshop, be employed in a factory or the workshop, or be allowed to remain in a room in which a manufacturing process or handicraft is being carried on, shall not apply in the cases and to the extent mentioned in Part Two of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of factories or workshops or parts thereof it is necessary, by reason of the continuous nature of the process, or of special circumstances affecting such class, to extend thereto the exceptions in this section or either of them, and that such extension can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act extend the same accordingly.

(c.) *Overtime.*

53. The regulations of this Act with respect to the employment of young persons and women shall not prevent the employment in the factories and workshops or parts thereof to which this exception applies of young persons and of women during a period of employment beginning at six o'clock in the morning and ending at eight o'clock in the evening, or beginning at seven o'clock in the morning and ending at nine o'clock in the evening, or beginning at eight o'clock in the morning and ending at ten o'clock in the evening, if they are employed in accordance with the following conditions; namely,

- (1.) There shall be allowed to every such young person and woman for meals during the period of employment not less than two hours, of which half an hour shall be after five o'clock in the evening; and
- (2.) Any such young person or woman shall not be so employed on the whole for more than five days in any one week, nor for more than forty-eight days in any twelve months.

This exception applies to the factories and workshops and parts thereof specified in Part Three of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the material which is the subject of the manufacturing process or handicraft therein being liable to be spoiled by the weather, or by reason of press of work arising at certain recurring seasons of the year, or by reason of the liability of the business to a sudden press of orders arising from unforeseen events, to employ young persons and women in manner authorised by this exception, and that such employment will not injure the health of the young persons and women affected thereby, he may by order made under this part of this Act extend this exception to such factories or workshops or parts thereof.

54. If in any factory or workshop or part thereof to which this exception applies, the process in which a child, young person, or woman is employed is in an incomplete state at the end of the period of employment of such child, young person, or woman, the provisions of this Act with respect to the period of employment shall not prevent

such child, young person, or woman from being employed for a further period not exceeding thirty minutes :

Provided that such further periods when added to the total number of hours of the periods of employment of such child, young person, or woman in that week, do not raise that total above the number otherwise allowed under this Act.

This exception applies to the factories and workshops specified in Part Four of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof the time for the completion of a process cannot by reason of the nature thereof be accurately fixed, and that the extension to such class of factories or workshops or parts thereof of this exception can be made without injury to the health of the children, young persons, and women affected thereby, he may by order made under this part of this Act, extend this exception accordingly.

55. Nothing in this Act shall prevent the employment of young persons and women so far as is necessary for the purpose only of preventing any damage which may arise from spontaneous combustion in the process of Turkey red dyeing, or from any extraordinary atmospheric influence in the process of open-air bleaching. [See also section 32 of 54 & 55 Vic., c. 75, *infra*.]

56. The regulations of this Act with respect to the employment of young persons and women shall not prevent the employment, in the factories and workshops and parts thereof to which this exception applies, of women during a period of employment beginning at six o'clock in the morning and ending at eight o'clock in the evening, or beginning at seven o'clock in the morning and ending at nine o'clock in the evening, if they are employed in accordance with the following conditions ; namely,

- (1.) There shall be allowed to every such woman for meals during the period of employment not less than two hours, of which half an hour shall be after five o'clock in the evening ; and
- (2.) Any such woman shall not be so employed on the whole for more than five days in any one week, nor for more than ninety-six days in any twelve months.

This exception applies to the factories and workshops and parts thereof specified in Part Five of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the perishable nature of the articles or materials which are the subject of the manufacturing process or handicraft, to employ women in manner authorised by this exception, and that such employment will not injure the health of the women employed, he may by order made under this part of this Act extend this exception to such factories or workshops or parts thereof.

57. Where it appears to a Secretary of State that factories driven by water power are liable to be stopped by drought or flood, he may, by order made under this part of this Act, grant to such factories a special exception permitting the employment of young persons and women during a period of employment from six o'clock in the morning until seven o'clock in the afternoon, on such conditions as he may

think proper, but so as that no person shall be deprived of the meal hours by this Act provided, nor be so employed on Saturday, and that as regards factories liable to be stopped by drought, such special exception shall not extend to more than ninety-six days in any period of twelve months, and as regards factories liable to be stopped by floods, such special exception shall not extend to more than forty-eight days in any period of twelve months. This overtime shall not extend in any case beyond the time already lost during the previous twelve months.

(d.) *Nightwork.*

53. Nothing in this Act shall prevent the employment, in factories and workshops to which this exception applies, of male young persons during the night, if they are employed in accordance with the following conditions :

- (1.) The period of employment shall not exceed twelve consecutive hours, and shall begin and end at the hours specified in the notice in this Act mentioned ; and
- (2.) The provisions of Part One of this Act with respect to the allowance of time for meals to young persons during the period of employment shall be observed with the necessary modifications as to the hour at which the times allowed for meals are fixed ; and
- (3.) A male young person employed during any part of the night shall not be employed during any part of the twelve hours preceding or succeeding the period of employment ; and
- (4.) A male young person shall not be employed on more than six nights, or in the case of blast furnaces or paper mills seven nights, in any two weeks.

The provisions of this Act with respect to the period of employment on Saturday, and with respect to the allowance to young persons of eight half holidays in every year or of whole holidays in lieu of them, shall not apply to a male young person employed in day and night turns in pursuance of this exception.

This exception applies to the factories and workshops specified in Part Six of the Third Schedule to this Act.

Where it is proved to the satisfaction of a Secretary of State that in any class of non-textile factories or workshops or parts thereof it is necessary, by reason of the nature of the business requiring the process to be carried on throughout the night, to employ male young persons of sixteen years of age or upwards at night, and that such employment will not injure the health of the male young persons employed, he may by order made under this part of this Act extend this exception to such factories or workshops or parts thereof, so far as regards young persons of the age of sixteen years or upwards.

59. In a factory or workshop in which the process of printing newspapers is carried on on not more than two nights in the week, nothing in this Act shall prevent the employment of a male young person of sixteen years of age and upwards at night during not more than two nights in a week, as if he were no longer a young person.

60. In glass works nothing in this Act shall prevent any male

young person from working according to the accustomed hours of the works, if he is employed in accordance with the following conditions; namely,

- (1.) The total number of hours of the periods of employment shall not exceed sixty in any one week; and
- (2.) The periods of employment for any such young person shall not exceed fourteen hours in four separate turns per week, or twelve hours in five separate turns per week, or ten hours in six separate turns per week, or any less number of hours in the accustomed number of separate turns per week, so that such number of turns do not exceed nine; and,
- (3.) Such young person shall not work in any turn without an interval of time not less than one full turn; and,
- (4.) There shall be allowed to such young person during each turn (so far as is practicable) the like times for meals as are required by this Act to be allowed in any other non-textile factory or workshop.

(4.) *Special Exception for Domestic and certain other Factories and Workshops.*

61. The provisions of this Act which relate—

- (1.) To the cleanliness (including limewashing, painting, varnishing, and washing) or to the freedom from effluvia, or to the overcrowding, or ventilation of a factory or workshop; or
 - (2.) To all children, young persons, and women employed in a factory or workshop having the times allowed for meals at the same hour of the day, or during any part of the times allowed for meals in a factory or workshop being employed in the factory or workshop or being allowed to remain in any room; or
 - (3.) To the affixing of any notice or abstract in a factory or workshop; or specifying any matter in the notice so affixed; or
 - (4.) To the allowance of any holidays to a child, young person, or woman; or
 - (5.) To the sending notice of accidents;
- shall not apply—

- (a.) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there. [See 54 & 55 Viet., c. 75, *infra*.]

And the provisions of this Act with respect to certificates of fitness for employment shall apply to any such private house, room, or place as aforesaid, which by reason of the nature of the work carried on there is a factory, as if the same were a workshop within the meaning of this Act, and not a factory.

Where the occupier of a workshop has served on an inspector

notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed for all the purposes of this Act to be conducted on the said system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the said system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing, and washing), or to freedom from effluvia.

62. The regulations of this Act with respect to the employment of women shall not apply to flax scutch mills which are conducted on the system of not employing either children or young persons therein, and which are worked intermittently, and for periods only which do not exceed in the whole six months in any year. A flax scutch mill shall not be deemed to be conducted on the system of not employing therein either children or young persons until the occupier has served on an inspector notice of his intention to conduct such mill on that system.

(5.) Supplemental as to Special Provisions.

63. Where it appears to a Secretary of State that the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of any child, young person, or woman employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night, he may by order made under this part of this Act direct that the adoption of such means or provision shall be a condition of such employment; and if it appears to a Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by order made under this part of this Act, rescind the order directing such adoption without prejudice to the subsequent making of another order.

64. Where an exception has been granted or extended under this part of this Act by an order of a Secretary of State, and it appears to a Secretary of State that such exception is injurious to the health of the children, young persons, or women employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the said exception was so granted or extended, he may by an order made under this part of this Act rescind the grant or extension, without prejudice to the subsequent making of another order.

65. Where a Secretary of State has power to make an order under this part of this Act, the following provisions shall apply to that order :

- (1.) The order shall be under the hand of the Secretary of State and shall be published in the London Gazette, and shall come into operation at the date of such publication in the London Gazette, or at any later date mentioned in the order :

- (2.) The order may be temporary or permanent, conditional or unconditional, and whether extending a prohibition or exception, granting an exception, directing the adoption of any means or provisions, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly:
- (3.) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the same has been so laid before such House, resolve that such order ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such order or to the making of any new order:
- (4.) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the extension or grant or otherwise for making the order.

66. An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception under this part of this Act, shall serve on an inspector, and (except in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply) affix in his factory or workshop notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

Before the service of such notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of such notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that such special exception does not apply to his factory or workshop, unless he has previously served on an inspector notice that he no longer intends to avail himself of such special exception.

The notice so served and affixed shall specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every child, young person, and woman where they differ from the ordinary hours or times.

An occupier of a factory or workshop shall enter in the prescribed register, and report to an inspector, the prescribed particulars respecting the employment of a child, young person, or woman in pursuance of an exception, but such entry and report need not be made in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply, except so far as may be from time to time prescribed by a Secretary of State.

Where the occupier of a factory or workshop avails himself of an exception under this part of this Act, and a condition for availing himself of such exception (whether specified in this part of this Act, or in an order of a Secretary of State made under this part of this Act) is not observed in that factory or workshop, then

- (1.) If such condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and
- (2.) In any other case a child, young person, or woman employed in the factory or workshop, in alleged pursuance of the

said exception, shall be deemed to be employed contrary to the provisions of this Act.

[See further section 14 of 54 & 55 Vic., c. 75, *infra*.]

PART III.

ADMINISTRATION, PENALTIES, AND LEGAL PROCEEDINGS.

(1.) *Inspection.*

67. A Secretary of State from time to time, with the approval of the Treasury as to numbers and salaries, may appoint such inspectors (under whatever title he may from time to time fix) and such clerks and servants as he may think necessary for the execution of this Act, and may assign to them their duties and award them their salaries, and may constitute a principal inspector with an office in London, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors, clerks, and servants.

The salaries of the inspectors, clerks, and servants, and the expenses incurred by them or by a Secretary of State in the execution of this Act, shall be paid out of moneys provided by Parliament.

Notice of the appointment of every such inspector shall be published in the London Gazette.

A person who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about a factory or workshop, shall not act as an inspector under this Act.

An inspector under this Act shall not be liable to serve in any parochial or municipal office.

Such annual report of the proceedings of the inspectors as the Secretary of State from time to time directs shall be laid before both Houses of Parliament.

A reference in this Act to an inspector refers, unless it is otherwise expressed, to an inspector appointed in pursuance of this section, and a notice or other document required by this Act to be sent to an inspector shall be sent to such inspector as a Secretary of State from time to time directs, by declaration published in the London Gazette or otherwise as he thinks expedient for making the same known to all persons interested.

68. An inspector under this Act shall for the purpose of the execution of this Act have power to do all or any of the following things; namely,

- (1.) To enter, inspect, and examine at all reasonable times by day and night a factory and a workshop and every part thereof when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and
- (2.) To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and

- (3.) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and
- (4.) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and
- (5.) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and
- (6.) To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and
- (7.) To exercise such other powers as may be necessary for carrying this Act into effect.

[See further sections 8 and 28 of 54 & 55 Vic., c. 75, *infra*.]

The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to such factory and workshop.

Every person who wilfully delays an inspector in the exercise of any power under this section, or who fails to comply with a requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or who conceals or prevents a child, young person, or woman from appearing before or being examined by an inspector, or attempts so to conceal or prevent a child, young person, or woman, shall be deemed to obstruct an inspector in the execution of his duties under this Act: Provided always, that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night, twenty pounds: and where an inspector is so obstructed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or where the offence is committed at night, five pounds.

[For section 69 now read section 25 of 54 & 55 Vic., c. 75, *infra*.]

70. Every inspector under this Act shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop shall, if required, produce to the occupier the said certificate.

Every person who forges or counterfeits any such certificate, or

makes use of any forged, counterfeited, or false certificate, or personates the inspector named in any such certificate, or falsely pretends to be an inspector under this Act, shall be liable to be imprisoned for a period not exceeding three months with or without hard labour.

(2.) *Certifying Surgeons.*

71. Where there is no certifying surgeon resident within three miles of a factory or workshop, the poor law medical officer shall be for the time being the certifying surgeon under this Act for such factory or workshop.

72. Subject to such regulations as may be from time to time made by a Secretary of State, an inspector may from time to time appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may from time to time revoke any such appointment.

Every appointment and revocation of appointment of a certifying surgeon may be annulled by a Secretary of State upon appeal to him for that purpose.

A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.

A Secretary of State may from time to time make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

[See further section 19 of 54 & 55 Vict. c. 75, *infra*.]

73. A certificate of fitness for employment shall not be granted for the purposes of this Act, except upon personal examination of the person named therein.

A certifying surgeon shall not examine a child or young person for the purposes of a certificate of fitness for employment, or sign any such certificate, elsewhere than at the factory or workshop where such child or young person is or is about to be employed, unless the number of children and young persons employed in that factory or workshop are less than five, or unless for some special reason allowed in writing by an inspector.

If a certifying surgeon refuses to grant for any person examined by him a certificate of fitness for employment, he shall when required give in writing and sign the reasons for such refusal.

74. With respect to the fees to be paid to certifying surgeons in respect of the examination of, and grant of certificates of fitness for employment for, children and young persons in factories or workshops, the following provisions shall have effect:

- (1.) The occupier may agree with the certifying surgeon as to the amount of such fees:
- (2.) In the absence of any such agreement the fees shall be those named in the following scale:—

When the examination is at a factory or workshop not exceeding one mile from the surgeon's residence,	{	2s. 6d. for each visit and 6d. for each person after the first five examined at that visit.
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When the examination is at a factory or workshop more than one mile from the surgeon's residence,

The above fees and an additional 6d. for each complete half mile over and above the mile.

When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and which place, as well as the day and hour, appointed for the purpose shall be published in the prescribed manner,

6d. for each person examined.

- (3.) The occupier shall pay the fees on the completion of the examination, or if any certificates are granted at the time at which the surgeon signs the certificates, or at any other time directed by an inspector:
- (4.) The occupier may deduct the fee or any part thereof, not exceeding in any case threepence, from the wages of the person for whom the certificate was granted:
- (5.) A Secretary of State may from time to time, if he think it expedient, alter any fees fixed by this section.

(3.) *Miscellaneous.*

75. Every person shall, within one month after he begins to occupy a factory, serve on an inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work, the nature and amount of the moving power therein, and the name of the firm under which the business of the factory is to be carried on, and in default shall be liable to a fine not exceeding five pounds.

[See as to Workshops, section 26 of 54 & 55 Vict. c. 75, *infra*.]

76. Where an inspector, by notice in writing, names a public clock, or some other clock open to public view, for the purpose of regulating the period of employment in a factory or workshop, the period of employment and times allowed for meals for children, young persons, and women in that factory or workshop shall be regulated by that clock, which shall be specified in the notice affixed in the factory or workshop.

77. The occupier of every factory and workshop to which this section applies shall keep in the prescribed form and with the prescribed particulars registers of the children and young persons employed in that factory or workshop, and of their employment, and of other matters under this Act.

The occupier of a factory or workshop shall send to an inspector such extracts from any register kept in pursuance of this Act as the inspector from time to time requires for the execution of his duties under this Act.

This section applies to every factory and workshop in which a child or young person under the age of sixteen years is, for the time being,

prohibited under this Act from being employed without a certificate of fitness for employment.

Where by reason of the number of children and young persons employed in a factory or workshop to which this section does not for the time being apply, or otherwise, it seems expedient to a Secretary of State so to do, he may order the occupier of that factory or workshop to keep a register under this section, with power to rescind such order, and while such order is in force this section shall apply to that factory or workshop.

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

[As to outworkers, see section 27 of 54 & 55 Vict. c. 75, *infra*.]

78. There shall be affixed at the entrance of a factory and a workshop, and in such other parts thereof as an inspector for the time being directs, and be constantly kept so affixed in the prescribed form and in such position as to be easily read by the persons employed in the factory or workshop,—

- (1.) The prescribed abstract of this Act: and
- (2.) A notice of the name and address of the prescribed inspector; and
- (3.) A notice of the name and address of the certifying surgeon for the district; and
- (4.) A notice of the clock (if any) by which the period of employment and times for meals in the factory or workshop are regulated; and
- (5.) Every notice and document required by this Act to be affixed in the factory or workshop.

In the event of a contravention of this section in a factory or workshop, the occupier of the factory or workshop shall be liable to a fine not exceeding forty shillings.

[See further as to particulars, section 24 of 54 & 55 Vict. c. 75, *infra*.]

79. Any notice, order, requisition, summons, and document under this Act may be in writing or print, or partly in writing and partly in print.

Any notice, order, requisition, summons, and document required or authorised to be served or sent for the purposes of this Act may be served and sent by delivering the same to or at the residence of the person on or to whom it is to be served or sent, or, where that person is the occupier of a factory or workshop, by delivering the same or a true copy thereof to his agent or to some person in such factory or workshop; it may also be served or sent by post by a pre-paid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and where it is required to be served on or sent to the occupier of a factory or workshop, it shall be deemed to be properly addressed if addressed to the occupier of such factory or workshop at the factory or workshop, with the addition of the proper postal address, but without naming the person who is the occupier.

80. Any Act for the time being in force relating to weights and

measures shall extend to weights, measures, scales, balances, steelyards, and weighing machines used in a factory or workshop in checking or ascertaining the wages of any person employed therein, in like manner as if they were used in the sale of goods, and as if such factory or workshop were a place where goods are kept for sale, and such Act shall apply accordingly, and every inspector of, or other person authorised to inspect or examine, weights and measures, shall inspect, stamp, mark, search for, and examine the said weights and measures, scales, balances, steelyards, and weighing machines accordingly, and for that purpose shall have the same powers and duties as he has in relation to weights, measures, scales, balances, steelyards, and weighing machines used in the sale of goods.

(4.) *Fines.*

81. If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act; the court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues. [See also section 28 of 54 & 55 Vict. c 75, *infra*.]

82. If any person is killed or suffers any bodily injury in consequence of the occupier of a factory having neglected to fence any machinery required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, or in consequence of the occupier of a factory or workshop having neglected to fence any vat, pan, or other structure required by or in pursuance of this Act to be securely fenced, or having neglected to maintain such fencing, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds, the whole or any part of which may be applied for the benefit of the injured person or his family, or otherwise as a Secretary of State determines:

Provided that the occupier of a factory shall not be liable to a fine under this section if an information against him for not fencing the part of the machinery, or the vat, pan, or other structure, by which the death or bodily injury was inflicted, has been heard and dismissed previous to the time when the death or bodily injury was inflicted. [See also section 28 of 54 & 55 Vict. c. 75, *infra*.]

83. Where a child, young person, or woman is employed in a factory or workshop contrary to the provisions of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding three, or if the offence was committed during the night, five pounds for each child, young person, or woman so employed; and where a child, young person, or woman is so employed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or if the offence was committed during the night, two pounds for each child, young person, or woman so employed.

A child, young person, or woman who is not allowed times for meals and absence from work as required by this Act, or during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act. [See also section 28 of 54 & 55 Vict. c. 75, *infra*.]

84. The parent of a child or young person shall,—

- (1.) If such child or young person is employed in a factory or workshop contrary to the provisions of this Act, be liable to a fine not exceeding twenty shillings for each offence, unless it appears to the court that such offence was committed without the consent, connivance, or wilful default of such parent; and
- (2.) If he neglects to cause such child to attend school in accordance with this Act, be liable to a fine not exceeding twenty shillings for each offence.

85. Every person who forges or counterfeits any certificate for the purposes of this Act (for the forging or counterfeiting of which no other punishment is provided), or who gives or signs any such certificate knowing the same to be false in any material particular, or who knowingly utters or makes use of any certificate so forged, counterfeited or false as aforesaid, or who knowingly utters or makes use of as applying to any person a certificate which does not so apply, or who personates any person named in a certificate, or who wilfully connives at the forging, counterfeiting, giving, signing, uttering, making use, or personating as aforesaid, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

Every person who wilfully makes a false entry in any register, notice, certificate, or document required by this Act to be kept or served or sent, or who wilfully makes or signs a false declaration under this Act, or who knowingly makes use of any such false entry or declaration, shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months with or without hard labour.

86. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine, has in fact been committed by some agent, servant, workman, or other person, such agent, servant, workman, or other person shall be liable to the same fine as if he were the occupier.

87. Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

When it is made to appear to the satisfaction of an inspector at the time of discovering the offence, that the occupier of the factory or

workshop had used all due diligence to enforce the execution of this Act, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the occupier and in contravention of his orders, then the inspector shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the occupier of the factory or workshop.

88. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

- (a.) where the repetition of the offence occurs after an information has been laid for the previous offence; or
- (b.) where the offence is one of employing two or more children, young persons, or women contrary to the provisions of this Act.

(5) *Legal Proceedings.*

89. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

All fines imposed in pursuance of this Act shall, save as otherwise expressly provided by this Act, be paid into the Exchequer.

The court of summary jurisdiction, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of that factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of such court.

90. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom; subject, in England, to the conditions and regulations following:

- (1) The appeal shall be made to the next practicable court of general or quarter sessions having jurisdiction in the county or place in which the decision of the court was given, holden not less than twenty-one days after the day on which such decision was given; and

[See now section 4 of 47 & 48 Vict. c. 43, and Schedule].

91. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:

- (1.) [See section 29 of 54 & 55 Vict. c. 75, *infra*.]
- (2.) and (3.) [See section 4 of 47 & 48 Vict. c. 43, and Schedule.]

- (4.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more :
- (5.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or title of the firm by which the occupier employing persons in the factory or workshop is usually known :
- (6.) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court except for the purpose of the hearing and determination of a special case. [See however 47 & 48 Vict. c. 43.]

92. If a person is found in a factory, except at meal times, or while all the machinery of the factory is stopped, or for the sole purpose of bringing food to the persons employed in the factory between the hours of four and five o'clock in the afternoon, such person shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory :

Provided that yards, playgrounds, and places open to the public view, school rooms, waiting rooms, and other rooms belonging to the factory in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory within the meaning of this enactment ; and this enactment shall not apply to a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply.

Where a child or young person is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the child or young person is not of that age.

A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of such conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, upon the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified. [Section 30 of 54 & 55 Vict. c. 75, extends this to workshops.]

PART IV.

DEFINITIONS, SAVINGS, APPLICATION TO SCOTLAND AND IRELAND, AND REPEAL.

(1.) *Definitions.*

93. The expression " textile factory " in this Act means—
any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used to move or

work any machinery employed in preparing, manufacturing, or finishing, or in any process incident to the manufacture of, cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof :

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories.

The expression "non-textile factory" in this Act means—

- (1.) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Fourth Schedule to this Act.
- (2.) also any premises or places named in Part Two of the said schedule wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.
- (3.) also any premises wherein, or within the close or curtilage or precincts of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them ; that is to say,
 - (a.) in or incidental to the making of any article or of part of any article, or
 - (b.) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or
 - (c.) in or incidental to the adapting for sale of any article,

and wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

The expression "factory" in this Act means textile factory and non-textile factory, or either of such descriptions of factories.

The expression "workshop" in this Act means—

- (1.) any premises or places named in Part Two of the Fourth Schedule to this Act, which are not a factory within the meaning of this Act,
- (2.) also any premises, room, or place not being a factory within the meaning of this Act, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes or any of them ; that is to say,
 - (a.) in or incidental to the making of any article or of part of any article, or
 - (b.) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or
 - (c.) in or incidental to the adapting for sale of any article,

and to which or over which premises, room, or place the employer of the persons working therein has the right of access or control.

A part of a factory or workshop may for the purposes of this Act be taken to be a separate factory or workshop ; and a place solely used

as a dwelling shall not be deemed to form part of the factory or workshop for the purposes of this Act.

[See, however, section 31 of 54 & 55 Vict. c. 75, *infra*.]

Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, such place shall not be deemed to form part of that factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

Any premises or place shall not be excluded from the definition of a factory or workshop by reason only that such premises or place are or is in the open air.

This Act shall not apply to such workshops, other than bake-houses, as are conducted on the system of not employing any child, young person, or woman therein, but save as aforesaid applies to all factories and workshops as before defined, inclusive of factories and workshops belonging to the Crown; provided that in case of any public emergency a Secretary of State may exempt a factory or workshop belonging to the Crown from this Act to the extent and during the period named by him.

The exercise by any child or young person in any recognised efficient school during a portion of the school hours of any manual labour for the purpose of instructing such child or young person in any art or handicraft, shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

94. A child, young person, or woman who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

For the purposes of this Act an apprentice shall be deemed to work for hire.

95. The expression "certified efficient school" in this Act means a public elementary school within the meaning of the Elementary Education Acts, 1870 and 1873, and any workhouse school in England certified to be efficient by the Local Government Board, and also any elementary school which is not conducted for private profit and is open at all reasonable times to the inspection of Her Majesty's inspectors of schools, and requires the like attendance from its scholars as is required in a public elementary school, and keeps such registers of those attendances as may be for the time being required by the Education Department, and is certified by the Education Department to be an efficient school; and the expression "recognised efficient school" means a certified efficient school as above defined, and also any school which the Education Department have not refused to take into consideration under the Elementary Education Act, 1870, as a school giving efficient elementary education to and suitable for the children of a school district, and which is recognised for the time being

by an inspector under this Act as giving efficient elementary education, and the inspector shall immediately report to the Education Department every school so recognised by him.

96. In this Act, unless the context otherwise requires,—

The expression “child” means a person under the age of fourteen years :

The expression “young person” means a person of the age of fourteen years and under the age of eighteen years :

The expression “woman” means a woman of eighteen years of age and upwards :

The expression “parent” means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages of a child or young person :

The expression “Treasury” means the Commissioners of Her Majesty’s Treasury :

The expression “Secretary of State” means one of Her Majesty’s Principal Secretaries of State :

The expression “Education Department” means the Lords of the Committee of the Privy Council on Education :

The expression “sanitary authority” means an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and any commissions, board, or vestry in the metropolis having the like powers as such urban sanitary authority :

The expression “person” includes a body of persons corporate or unincorporate :

The expression “week” means the period between midnight on Saturday night and midnight on the succeeding Saturday night :

The expression “night” means the period between nine o’clock in the evening and six o’clock in the succeeding morning :

The expression “prescribed” means prescribed for the time being by a Secretary of State :

The expression “Summary Jurisdiction Acts” means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,” and any Acts amending the same :

The expression “court of summary jurisdiction” means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred thereto :

The expression “mill-gearing” comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process.

The factories and workshops named in the Fourth Schedule to this Act are in this Act referred to by the names therein assigned to them.

Special Exemption of certain Trades.

97. The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour by way of trade or for purposes of gain in or incidental to any of the handicrafts specified in the Fifth Schedule to this Act, shall not of itself constitute such house or room a workshop within the meaning of this Act.

When it is proved to the satisfaction of a Secretary of State that by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend this section to that handicraft, he may by order extend the same.

The order shall be made in manner provided by Part Two of this Act, and that part shall apply so far as circumstances admit as if the order were an order extending an exception.

98. The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour for the purposes of gain in or incidental to some of the purposes in this Act in that behalf mentioned, shall not of itself constitute such house or room a workshop where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to such family.

(2.) Savings.

99. Where in a factory the owner or hirer of a machine or implement moved by steam, water, or other mechanical power, in or about or in connection with which machine or implement children, young persons, or women are employed, is some person other than the occupier of a factory, and such children, young persons, or women are in the employment and pay of the owner or hirer of such machine or implement, in any such case such owner or hirer shall, so far as respects any offence against this Act which may be committed in relation to such children, young persons, or women, be deemed to be the occupier of the factory.

100. Nothing in this Act shall extend—

- (1.) To any young person, being a mechanic, artisan, or labourer, working only in repairing either the machinery in or any part of a factory or workshop; or
- (2.) To the process of gutting, salting, and packing fish immediately upon its arrival in the fishing boats.

101. The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to a factory or workshop which is subject to the provisions of this Act relating to cleanliness, ventilation and overcrowding, but shall apply to every other factory, workshop, and workplace.

It is hereby declared that the Public Health Act, 1875, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as it applies to buildings where more than twenty are employed.

102. Any enactment or document referring to the Acts repealed by this Act, or any of them, or to any enactment thereof, shall be construed to refer to this Act and to the corresponding enactment thereof.

(3.) *Application of Act to Scotland and Ireland.*

103. [This clause is now obsolete.]

104. Where the age of any child is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the elementary education or employment in labour of such child, any person, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by a Secretary of State, and on payment of such fee, not exceeding one shilling, as a Secretary of State from time to time fixes, shall be entitled to obtain—

- (1.) In Scotland an extract under the hand of the registrar under the Act of the seventeenth and eighteenth years of her present Majesty, chapter eighty, and any Acts amending the same, of the entry in the register kept under those Acts; and
- (2.) In Ireland a certified copy under the hand of the registrar or superintendent registrar under the Registration of Births and Deaths (Ireland) Act of the entry in the register under that Act of the birth of the child named in the requisition.

[See now section 35 of 54 & 56 Vict. c. 75, *infra*.]

105. In the application of this Act to Scotland—

- (1.) The expression “certified efficient school” means any public or other elementary school under Government inspection:
[For (2) now read section 33 (4) of 54 & 55 Vict. c. 75, *infra*.]
- (3.) The expression “sanitary authority” means the local authority under the Public Health (Scotland) Act, 1867:
- (4.) The expression “medical officer of health” means the medical officer under the Public Health (Scotland) Act, 1867, or where no such officer has been appointed, the medical officer appointed by the parochial board:
The expression “poor law medical officer” means the medical officer appointed by the parochial board:
- (5.) The expression “Companies Clauses Consolidation Act, 1845,” means the Companies Clauses Consolidation (Scotland) Act, 1845:
- (6.) The expression “Summary Jurisdiction Acts” means the Summary Procedure Act, 1864, and any Acts amending the same:
- (7.) The expression “court of summary jurisdiction” means the sheriff of the county or any of his substitutes:
- (8.) The expression “Education Department” means the Lords of the Committee of the Privy Council appointed by Her Majesty on Education in Scotland:
- (9.) The expression “county court” means the sheriff court:
- (10.) All matters required by this Act to be published in the London Gazette shall (if they relate exclusively to Scotland), instead of being published in the London Gazette, be published in the Edinburgh Gazette only:
- (11.) The expression “information” means petition or complaint:
- (12.) The expression “informant” means petitioner, pursuer, or complainant:
- (13.) The expression “defendant” means defender or respondent:

- (14.) The expression "clerk of the peace" means sheriff clerk :
- (15.) All offences under this Act shall be prosecuted and all penalties under this Act shall be recovered under the provisions of the Summary Jurisdiction Acts at the instance of the procurator fiscal or of an inspector under this Act :
- (16.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by such procurator fiscal or inspector presented in common form :
- (17.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months :
- (18.) It shall be no objection to the competency of an inspector to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such inspector :
- (19.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction :
- (20.) All penalties imposed and recovered under this Act shall be paid to the clerk of the court, and by him accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of her Majesty's Exchequer, and shall be carried to the Consolidated Fund :
- (21.) All jurisdictions, powers, and authorities necessary for the purposes of this section are conferred on the sheriffs and their substitutes :
- (22.) Any person may appeal from any order or conviction under this Act to the Court of Justiciary, under and in terms of the Act of the twentieth year of the reign of his Majesty King George the Second, chapter forty-three, or under any enactment amending that Act, or applying or incorporating its provisions, or any of them, with regard to appeals, or to the Court of Justiciary at Edinburgh under and in terms of the Summary Prosecutions Appeal (Scotland) Act, 1875.

[See further section 33 of 54 & 55 Vict. c. 75, *infra*.]

106. In the application of this Act to Ireland—

- (1.) The expression "certified efficient school" means any national school, or any school recognised by the Lord Lieutenant and Privy Council as affording sufficient means of literary education for the purposes of this Act :

[For (2) now read section 34 of 54 & 55 Vict. c. 75, *infra*.]

- (3.) The expression "sanitary authority" means an urban or rural sanitary authority within the meaning of the Public Health (Ireland) Act, 1874, and any Act amending the same :

- (4.) The expression "medical officer of health" means the medical sanitary officer of the sanitary district :

The expression "poor law medical officer" means the dispensary doctor :

- (5.) Any act authorised to be done or consent required to be given by the Education Department under this Act shall

be done and given by the Lord Lieutenant or Lords Justices of Ireland, acting by and with the advice of the Privy Council in Ireland :

- (6.) The expression "county court" means the civil bill court :
- (7.) The expression "Summary Jurisdiction Acts" means, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such districts, or of the police of such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending the same :
- (8.) A court of summary jurisdiction when hearing and determining an information or complaint in any matter arising under this Act shall be constituted within the police district of Dublin metropolis of one of the divisional justices of that district sitting at a police court within the district, and elsewhere of a stipendiary magistrate sitting alone, or with others, or of two or more justices of the peace sitting in petty sessions at a place appointed for holding petty sessions :
- (9.) Appeals from a court of summary jurisdiction shall lie in the manner and subject to the conditions and regulations prescribed in the twenty-fourth section of the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same :
- (10.) All fines imposed under this Act shall, save as is otherwise expressly provided by this Act, be applied in the manner directed by the Fines Act (Ireland), 1851, and any Act amending the same :
- (11.) The provisions of section nineteen of the Public Health Act, 1866, or of any enactment substituted for that section with respect to any factory, workshop, or workplace not kept in a cleanly state, or not ventilated, or overcrowded, shall not apply to any factory or workshop which is subject to the provisions of this Act with respect to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, and workplace :
It is hereby declared that the Sanitary Acts within the meaning of the Public Health (Ireland) Act, 1874, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as they apply to buildings where more than twenty persons are employed :
- (12.) All matters required by this Act to be published in the London Gazette shall, if they relate exclusively to Ireland, instead of being published in the London Gazette, be published in the Dublin Gazette only.

(4.) *Repeal.*

107. The Acts specified in the Sixth Schedule to this Act are hereby repealed from and after the commencement of this Act to the extent in the third column of that schedule mentioned :

Provided that—

- (1.) All notices affixed in the factory in pursuance of the Acts hereby repealed shall, so far as they are in accordance with the provisions of this Act, be deemed to have been affixed in pursuance of this Act ; and

- (2.) All inspectors, sub-inspectors, officers, clerks, and servants appointed in pursuance of the Acts hereby repealed shall continue in office and shall be subject to removal and have the same powers and duties as if they had been appointed in pursuance of this Act; and
- (3.) All certifying surgeons appointed in pursuance of any Act hereby repealed shall be deemed to have been appointed in pursuance of this Act; and
- (4.) All surgical certificates granted in pursuance of any Act hereby repealed shall have effect as certificates of fitness for employment granted in pursuance of this Act, and all registers kept in pursuance of any Act hereby repealed shall, until otherwise directed by a Secretary of State, be deemed to be the registers required by this Act; and
- (5.) Any order made by a Secretary of State in pursuance of any enactment hereby repealed for granting any permission or relaxation to any factories or workshops may, if the Secretary of State so direct, continue in force for a period not exceeding three months after the commencement of this Act; and
- (6.) The standard of proficiency fixed by the Education Department in pursuance of any enactment hereby repealed shall be deemed to have been fixed in pursuance of this Act; and
- (7.) [Now obsolete.]
- (8.) This repeal shall not affect—
 - (a.) Anything duly done or suffered under any enactment hereby repealed; or
 - (b.) Any obligation or liability incurred under any enactment hereby repealed; or
 - (c.) Any penalty or punishment incurred in respect of any offence committed against an enactment hereby repealed; or
 - (d.) Any legal proceeding or remedy in respect of any such obligation, liability, penalty, or punishment as aforesaid, and any such legal proceeding and remedy may be carried on as if this Act had not passed.

SCHEDULES.

FIRST SCHEDULE.

SPECIAL PROVISIONS FOR HEALTH.

Factories and Workshops in which the Employment of Young Persons and Children is restricted.

1. In a part of a factory or workshop in which there is carried on—
 - the process of silvering of mirrors by the mercurial process; or
 - the process of making white lead,
 a young person or child shall not be employed.

2. In the part of a factory in which the process of melting or annealing glass is carried on a child or female young person shall not be employed.

3. In a factory or workshop in which there is carried on—

(a.) the making or finishing of bricks or tiles not being ornamental tiles; or

(b.) the making or finishing of salt,

a girl under the age of sixteen years shall not be employed.

4. In a part of a factory or workshop in which there is carried on—

(a.) Any dry grinding in the metal trade, or

(b.) the dipping of lucifer matches,

a child shall not be employed.

5. In any grinding in the metal trades other than dry grinding or in fustian cutting a child under the age of eleven years shall not be employed.

SECOND SCHEDULE.

SPECIAL RESTRICTIONS.

Places forbidden for Meals.

The prohibition on a child, young person, or woman taking a meal or remaining during the times allowed for meals in certain parts of factories or workshops applies to the parts of factories and workshops following; that is to say,

(1.) In the case of glass works, to any part in which the materials are mixed; and

(2.) In the case of glass works where flint glass is made, to any part in which the work of grinding, cutting, or polishing is carried on; and

(3.) In the case of lucifer-match works, to any part in which any manufacturing process or handieraft (except that of cutting the wood) is usually carried on; and

(4.) In the case of earthenware works, to any part known or used as dippers house, dippers drying room, or china scouring room.

THIRD SCHEDULE.

SPECIAL EXCEPTIONS.

PART I.

Period of Employment.

The exception respecting the employment of children, young persons, and women between the hours of eight in the morning and eight in the evening, and on Saturday between the hours of eight in the morning and four in the afternoon or between the hours of seven in the morning and three in the afternoon, applies to any factory or workshop or part thereof in which any of the following manufacturing processes or handierafes are carried on; that is to say,

(a.) Lithographic printing:

(b.) Turkey red dyeing:

- (c.) The making of any article of wearing apparel :
- (d.) The making of furniture hangings :
- (e.) Artificial flower making :
- (f.) Bon-bon and Christmas present making .
- (g.) Valentine making :
- (h.) Fancy box making :
- (i.) Envelope making :
- (k.) Almanac making :
- (l.) Playing card making :
- (m.) Machine ruling :
- (n.) Biscuit making :
- (o.) Firewood cutting :
- (p.) Job dyeing : or
- (q.) Aerated water making : and also to
- (r.) Bookbinding works :
- (s.) Letter-press printing works : and
- (t.) A part of a factory or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.

PART II.

Meal Hours.

The cases in which the provisions of this Act as to meal times being allowed at the same hour of the day are not to apply are—

- (1.) The case of children, young persons, and women employed in the following factories ; that is to say,
 Blast furnaces,
 Iron mills,
 Paper mills,
 Glass works, and
 Letter-press printing works ; and
- (2.) The cases of male young persons employed in that part of any print works or bleaching and dyeing works in which the process of dyeing or open-air bleaching is carried on.

The cases in which and the extent to which the provisions of this Act as to a child, young person or woman, during the times allowed for meals being employed or being allowed to remain in a room in which a manufacturing process or handicraft is being carried on, are not to apply are—

- (1.) The case of children, young persons, and women employed in the following factories ; that is to say,
 Iron mills,
 Paper mills,
 Glass works (save as otherwise provided by this Act),
 and
 Letter-press printing works ; and
- (2.) The case of a male young person employed in that part of any print works or bleaching and dyeing works in which the process of dyeing or open-air bleaching is carried on, to this extent, that the said provisions shall not prevent him, during the times allowed for meals to any other young person or to any child or woman, from being em-

played or being allowed to remain in any room in which any manufacturing process is carried on, and shall not prevent, during the times allowed for meals to such male young person, any other young person or any child or woman from being employed in the factory or allowed to remain in any room in which any manufacturing process is carried on.

PART III.

Overtime.

The exception with respect to the employment of young persons and women for forty-eight days in any twelve months during a period of employment, beginning at six or seven o'clock in the morning and ending at eight or nine o'clock in the evening, or beginning at eight o'clock in the morning and ending at ten o'clock in the evening, applies to each of the factories and workshops, and parts thereof, following; that is to say,

- (1.) Where the material which is the subject of the manufacturing process or handicraft is liable to be spoiled by weather; namely,

(a.) Flax scutch mills; and

(b.) A factory or workshop or part thereof in which is carried on the making or finishing of bricks or tiles not being ornamental tiles; and

(c.) The part of rope works in which is carried on the open-air process; and

(d.) The part of bleaching and dyeing works in which is carried on open-air bleaching or Turkey red dyeing; and

(e.) A factory or workshop or part thereof in which is carried on glue making; and

- (2.) Where press of work arises at certain recurring seasons of the year; namely,

(f.) Letter-press printing works;

(g.) Bookbinding works; and

a factory, workshop, or part thereof in which is carried on the manufacturing process or handicraft of—

(h.) Lithographie printing; or

(i.) Machine ruling; or

(k.) Firewood-cutting; or

(l.) Bon-bon and Christmas present making; or

(m.) Almanac making; or

(n.) Valentine making; or

(o.) Envelope making; or

(p.) Aërated water making; or

(q.) Playing card making; and

- (3.) Where the business is liable to sudden press of orders arising from unforeseen events; namely,

A factory or workshop, or part thereof, in which is carried on the manufacturing process or handicraft of—

(r.) The making up of any article of wearing apparel; or

(s.) The making up of furniture hangings; or

(t.) Artificial flower making; or

- (u.) Fancy box making ; or
- (v.) Biscuit making ; or
- (w.) Job dyeing ; and also,
- (x.) A part of a factory or workshop which is a warehouse not used for any manufacturing process or handicraft, and in which persons are solely employed in polishing, cleaning, wrapping, or packing up goods.

Provided that the said exception shall not apply—

- (a.) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there ; or
- (b.) To a workshop or part thereof which is conducted on the system of not employing any child or young person therein.

PART IV.

Additional Half Hour.

The exception with respect to the employment of a child, young person, or woman for a further period of thirty minutes where the process is in an incomplete state applies to the factories following ; (that is to say),

- (a.) Bleaching and dyeing works ;
- (b.) Print works ;
- (c.) Iron mills in which male young persons are not employed during any part of the night ;
- (d.) Foundries in which male young persons are not employed during any part of the night ; and
- (e.) Paper mills in which male young persons are not employed during any part of the night.

PART V.

Overtime for Perishable Articles.

The exception with respect to the employment of women for ninety-six days in any twelve months during a period of employment beginning at six or seven o'clock in the morning and ending at eight or nine o'clock in the evening applies to a factory or workshop or part thereof in which any of the following processes is carried on ; namely,

- The process of making preserves from fruit,
- The process of preserving or curing fish, or
- The process of making condensed milk.

PART VI.

Night Work.

The exception with respect to the employment of male young persons during the night applies to the factories following (that is to say),

- (a.) Blast furnaces,
- (b.) Iron mills,
- (c.) Letter-press printing works, and
- (d.) Paper mills.

PART VII.

Spell.

The exception respecting the continuous employment in certain textile factories during the winter months of children, young persons, and women without an interval of at least half an hour for a meal for the same period as in a non-textile factory, applies to textile factories solely used for—

- (a.) The making of elastic web ; or
- (b.) The making of ribbon ; or
- (c.) The making of trimming.

FOURTH SCHEDULE.

LIST OF FACTORIES AND WORKSHOPS.

PART I.

Non-Textile Factories.

(1.) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper ;

(2.) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on ;

(3.) "Earthenware works," that is to say, any place in which persons work for hire in making or assisting in making, finishing, or assisting in finishing, earthenware of any description, except bricks and tiles not being ornamental tiles. [See now section 38 of 54 & 55 Vict. c. 75, *infra*.]

(4.) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer-matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood ;

(5.) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps ;

(6.) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges ;

(7.) "Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power ;

(8.) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian-cutting;

(9.) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on;

(10.) "Copper mills";

(11.) "Iron mills," that is to say, any mill, forge, or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel;

(12.) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work;

(13.) "Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha;

(14.) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on;

(15.) "Glass works," that is to say, any premises in which the manufacture of glass is carried on;

(16.) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on;

(17.) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on;

(18.) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on;

(19.) Flax scutch mills.

· PART II.

Non-Textile Factories and Workshops.

(20.) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on;

(21.) "Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power;

(22.) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived;

(23.) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as hereinbefore

defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power;

(24.) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired;

(25.) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals;

(26.) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts.

FIFTH SCHEDULE.

SPECIAL EXEMPTIONS.

Straw plaiting.

Pillow-lace making.

Glove making.

SIXTH SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title of Act.	Extent of Repeal.
42 Geo. 3. c. 73.	An Act for the preservation of the health and morals of apprentices and others employed in cotton and other mills and cotton and other factories.	The whole Act.
3 & 4 Will. 4. c. 103.	An Act to regulate the labour of children and young persons in the mills and factories of the United Kingdom.	The whole Act.
7 & 8 Vict. c. 15.	An Act to amend the Laws relating to labour in factories.	The whole Act.
9 & 10 Vict. c. 40.	An Act to declare certain ropeworks not within the operation of the Factory Acts.	The whole Act.
13 & 14 Vict. c. 54.	An Act to amend the Acts relating to labour in factories.	The whole Act.

SIXTH SCHEDULE (*continued*).

Session and Chapter.	Title of Act.	Extent of Repeal.
16 & 17 Vict. c. 104.	An Act further to regulate the employment of children in factories.	The whole Act.
19 & 20 Vict. c. 38.	The Factory Act, 1856.	The whole Act.
24 & 25 Vict. c. 119.	An Act to place the employment of women, young persons, youths, and children in lace factories under the regulations of the Factories Acts.	The whole Act.
26 & 27 Vict. c. 40.	The Bakehouse Regulation Act, 1863.	The whole Act.
27 & 28 Vict. c. 48.	The Factory Acts Extension Act, 1864.	The whole Act.
29 & 30 Vict. c. 90.	The Sanitary Act, 1866.	The following words (so far as unrepealed) in section nineteen, "not already under the operation of any general Act for the regulation of factories or bakehouses."
30 & 31 Vict. c. 103.	The Factories Acts Extension Act, 1867.	The whole Act.
30 & 31 Vict. c. 146.	The Workshop Regulation Act, 1867.	The whole Act.
33 & 34 Vict. c. 62.	The Factory and Workshop Act, 1870.	The whole Act.
34 & 35 Vict. c. 19.	An Act for exempting persons professing the Jewish religion from penalties in respect of young persons and females professing the said religion working on Sundays.	The whole Act.
34 & 35 Vict. c. 104.	The Factory and Workshop Act, 1871.	The whole Act.
37 & 38 Vict. c. 44.	The Factory Act, 1874.	The whole Act.
38 & 39 Vict. c. 55.	The Public Health Act, 1875.	The following words in section four, "more than twenty," and the words "at one time," and the following

SIXTH SCHEDULE (*continued*).

Session and Chapter.	Title of Act.	Extent of Repeal.
38 & 39 Vict. c. 55 (<i>continued</i>).	The Public Health Act, 1875 (<i>continued</i>).	words in section ninety-one, "not already under the operation of any general Act for the regulation of factories or bake-houses."
39 & 40 Vict. c. 79.	The Elementary Education Act, 1876.	Section eight and the following words in section forty-eight, "the Factory Acts, 1833 to 1874, as amended by this Act, and includes the Workshop Acts, 1867 to 1871, as amended by this Act, and".

VII. FACTORY AND WORKSHOP ACT, 1891.

(54 & 55 VICT. CAP. 75.)

Sanitary Provisions.

1.—(1.) If the Secretary of State is satisfied that the provisions of the law relating to public health as to effluvia arising from any drain, privy, or other nuisance, or with respect to cleanliness, ventilation, overcrowding, or limewashing are not observed in any workshops or class of workshops (including workshops conducted on the system of not employing any child, young person, or woman therein) or laundries, he may, if he thinks fit, by order, authorise and direct an inspector or inspectors under the principal Act to take, during such period as may be mentioned in the order, such steps as appear necessary or proper for enforcing the said provisions.

(2.) An inspector authorised in pursuance of this section shall, for the purpose of his duties, have the same powers with respect to workshops and laundries to which this section applies, as he has under the principal Act as amended by this Act with respect to factories, and may for the same purpose take the like proceedings for punishing or remedying any default in compliance with the said provisions of the law relating to public health as might be taken by the sanitary authority of the district in which the workshops or laundries are situate, and shall be entitled to recover from that sanitary authority all such expenses in and about any proceedings in respect of such

workshops or laundries as he may incur and are not recovered from any other person, and have not been incurred in any unsuccessful proceedings.

2.—(1.) Section four of the principal Act shall apply to workshops conducted on the system of not employing any child, young person, or woman therein, and to laundries.

(2.) Where notice of an act, neglect, or default is given by an inspector under the said section four, as amended by this Act, to a sanitary authority, and proceedings are not taken within a reasonable time for punishing or remedying the act, neglect, or default, the inspector may take the like proceedings for punishing or remedying the same as the sanitary authority might have taken, and shall be entitled to recover from the sanitary authority all such expenses in and about the proceedings as the inspector incurs and are not recovered from any other person, and have not been incurred in any unsuccessful proceedings.

3.—(1.) Sections three and thirty-three of the Factory and Workshop Act, 1878 (which relate to cleanliness, ventilation, and overcrowding in, and limewashing of, factories and workshops), shall cease to apply to workshops.

(2.) For the purpose of their duties with respect to workshops (not being workshops to which the Public Health (London) Act, 1891, applies), a sanitary authority and their officers shall, without prejudice to their other powers, have all such powers of entry, inspection, taking legal proceedings or otherwise, as an inspector under the principal Act.

(3.) If any child, young person, or woman, is employed in a workshop, and the medical officer of the sanitary authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector of the district.

4.—(1.) Every workshop as defined by the principal Act (including any workshop conducted on the system of not employing any child, young person, or woman therein), and every workplace within the meaning of the Public Health Act, 1875, shall be kept free from effluvia arising from any drain, water closet, earth closet, privy, urinal, or other nuisance, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily under the law relating to public health.

(2.) Where on the certificate of a medical officer of health or inspector of nuisances it appears to any sanitary authority that the limewashing, cleansing, or purifying of any such workshop, or of any part thereof, is necessary for the health of the persons employed therein, the sanitary authority shall give notice in writing to the owner or occupier of the workshop to limewash, cleanse, or purify the same or part thereof, as the case may require.

(3.) If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a fine not exceeding ten shillings for every day during which he continues to make default, and the sanitary authority may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default.

(4.) This section shall not apply to any workshop or workplace to which the Public Health (London) Act, 1891, applies.

5.—In section three of the principal Act, for the word “privy,” shall be substituted the words “water closet, earth closet, privy, urinal,” and for the words “injurious to the health of the persons employed therein” shall be substituted the words “dangerous or injurious to the health of the persons employed therein.”

Safety.

6.—(1.) The words “near to which any person is liable to pass or to be employed” in sub-section (1) of section five of the principal Act are hereby repealed.

(2.) In sub-section three of the same section before the word “every part” shall be inserted the words “all dangerous parts of the machinery and.”

7.—(1.) Every factory of which the construction is commenced after the first day of January one thousand eight hundred and ninety-two, and in which more than forty persons are employed, shall be furnished with a certificate from the sanitary authority of the district in which the factory is situate that the factory is provided on the storeys above the ground floor with such means of escape in case of fire for the persons employed therein as can reasonably be required under the circumstances of each case, and a factory not so furnished shall be deemed not to be kept in conformity with the principal Act, and it shall be the duty of the sanitary authority to examine every such factory, and on being satisfied that the factory is so provided to give such a certificate as aforesaid.

(2.) With respect to all factories to which the foregoing provisions of this section do not apply, and in which more than forty persons are employed, it shall be the duty of the sanitary authority of every district, as soon as may be after the passing of this Act, and afterwards from time to time, to ascertain whether all such factories within their district are provided with such means of escape as aforesaid, and, in the case of any factory which is not so provided, to serve on the person being within the meaning of the Public Health Act, 1875, the owner of the factory a notice in writing specifying the measures necessary for providing such means of escape as aforesaid, and requiring him to carry out the same before a specified date, and thereupon such owner shall, notwithstanding any agreement with the occupier, have power to take such steps as are necessary for complying with the requirements, and, unless such requirements are so complied with, such owner shall be liable to a fine not exceeding one pound for every day that such non-compliance continues. In case of a difference of opinion between the owner of the factory and the sanitary authority, the difference shall, on the application of either party, be referred to arbitration, and thereupon the provisions of the First Schedule to this Act shall have effect, except that the parties to the arbitration shall be the sanitary authority on the one hand and the owner on the other, and the award on the arbitration shall be binding on the parties thereto. If the owner alleges that the occupier of the factory ought to bear or contribute to the expenses of complying with the requirement, he may apply to the county court having jurisdiction where the factory is situate, and thereupon the county court, after hearing the occupier, may make such order as appears to the court just and equitable under all the circumstances of the case.

(3.) All expenses incurred by a sanitary authority in the execution of this section shall be defrayed—

(a.) in the case of an authority of an urban district, as part of their expenses of the general execution of the Public Health Act, 1875; and

(b.) in the case of an authority of a rural district, as special expenses incurred in the execution of the Public Health Act, 1875; and such expenses shall be charged to the contributory place in which the factory is situate.

(4.) In the application of this section to the administrative county of London, the London County Council shall take the place of the sanitary authority, and their expenses in the execution of this section shall be defrayed as part of their expenses in the management of the Metropolitan Building Act, 1855, and the Acts amending the same.

Special Rules and Requirements.

8.—(1.) Where the Secretary of State certifies that in his opinion any machinery or process or particular description of manual labour used in a factory or workshop (other than a domestic workshop) is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of women, children, or any other class of persons, or that the provision for the admission of fresh air is not sufficient, or that the quantity of dust generated or inhaled in any factory or workshop is dangerous or injurious to health, the chief inspector may serve on the occupier of the factory or workshop a notice in writing, either proposing such special rules or requiring the adoption of such special measures as appear to the chief inspector to be reasonably practicable and to meet the necessities of the case.

(2.) Unless within twenty-one days after receipt of the notice the occupier serves on the chief inspector a notice in writing that he objects to the rules or requirements, the rules shall be established, or, as the case may be, the requirement shall be observed.

(3.) If the notice of objection suggests any modification of the rules or requirement, the Secretary of State shall consider the suggestion and may assent thereto with or without any further modification which may be agreed on between the Secretary of State and the occupier, and thereupon the rules shall be established, or, as the case may be, the requirement shall be observed, subject to such modification.

(4.) If the Secretary of State does not assent to any objection or modification suggested as aforesaid by the occupier, the matter in difference between the Secretary of State and the occupier shall be referred to arbitration under this Act, and the date of the receipt of the notice of objection by the Secretary of State shall be deemed to be the date of the reference, and the rules shall be established, or the requisition shall have effect, as settled by an award on arbitration.

(5.) Any notice under this section may be served by post.

(6.) With respect to arbitrations under this Act the provisions in the First Schedule to this Act shall have effect.

(7.) No person shall be precluded by any agreement from doing, or be liable under any agreement to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of this section.

9.—(1.) If any person who is bound to observe any special rules established for any factory or workshop under this Act acts in contravention of, or fails to comply with, any such special rule, he shall be liable on summary conviction to a fine not exceeding two pounds; and the occupier of the factory or workshop shall also be liable on summary conviction to a fine not exceeding ten pounds, unless he proves that he had taken all reasonable means, by publishing, and to the best of his power enforcing, the rules to prevent the contravention or noncompliance.

(2.) A factory or workshop in which there is a contravention of any requirement made under this Act shall be deemed not to be kept in conformity with the principal Act.

10.—(1.) After special rules are established under this Act in any factory or workshop, the Secretary of State may from time to time propose to the occupier of the factory or workshop any amendment of the rules or any new rules; and the provisions of this Act with respect to the original rules shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to the original rules.

(2.) The occupier of any factory or workshop in which special rules are established may from time to time propose in writing to the chief inspector, with the approval of the Secretary of State, any amendment of the rules or any new rules, and the provisions of this Act with respect to a suggestion of an occupier for modifying the special rules proposed by a chief inspector shall apply to all such amendments and new rules in like manner, as nearly as may be, as they apply to such a suggestion.

11.—(1.) Printed copies of all special rules for the time being in force under this Act in any factory or workshop shall be kept posted up in legible characters in conspicuous places in the factory or workshop where they may be conveniently read by the persons employed. In a factory or workshop in Wales or Monmouthshire the rules shall be posted up in the Welsh language also.

(2.) A printed copy of all such rules shall be given by the occupier to any person affected thereby on his or her application.

(3.) If the occupier of any factory or workshop fails to comply with any provision of this section, he shall be liable on summary conviction to a fine not exceeding ten pounds.

(4.) Every person who pulls down, injures, or defaces any special rules when posted up in pursuance of this Act, or any notice posted up in pursuance of the special rules, shall be liable on summary conviction to a fine not exceeding five pounds.

12. An inspector shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any special rules for the time being established under this Act for any factory or workshop, and a copy so certified shall be evidence (but not to the exclusion of other proof) of those special rules, and of the fact that they are duly established under this Act.

Period of Employment.

13.—(1.) For subsection (2) of section fifteen of the principal Act the following subsection shall be substituted, namely:—

(2.) In a workshop which is conducted on the system of not employ-

ing therein either children or young persons, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system—

(a.) The period of employment for a woman shall, except on Saturday, be a specified period of twelve hours taken between six o'clock in the morning and ten o'clock in the evening, and shall on Saturday be a specified period of eight hours, taken between six o'clock in the morning and four o'clock in the afternoon; and

(b.) There shall be allowed to a woman for meals and absence from work during the period of employment, a specified period not less, except on Saturday, than one hour and a half, and on Saturday than half an hour.

14.—(1.) The report required by section sixty-six of the principal Act respecting the employment of a child, young person, or woman in pursuance of an exception relating to employment overtime, must be sent to an inspector not later than eight o'clock in the evening on which the child, young person, or woman is employed in pursuance of the exception.

(2.) Where, under the said section sixty-six, the occupier of a factory or workshop is required to make an entry and report respecting the employment overtime of a child, young person, or woman in the factory or workshop, he shall cause a note containing the prescribed particulars respecting the employment to be kept affixed in the factory or workshop during the prescribed time, and in default of so doing shall be liable, on summary conviction, to a fine not exceeding five pounds.

15. For section eighteen of the principal Act the following section shall be substituted, namely,—

In a non-textile factory or workshop where a young person or woman has not been actually employed for more than eight hours on any day in a week, and notice of such non-employment has been affixed in the factory or workshop and served on the inspector, the period of employment on Saturday in that week for that young person or woman may be from six o'clock in the morning to four o'clock in the afternoon, with an interval of not less than two hours for meals.

Holidays.

16. For subsection (4) of section twenty-two of the principal Act the following subsection shall be substituted, namely:—

(4.) Cessation from work shall not be deemed to be a half holiday or whole holiday, unless a notice of the half holiday or whole holiday has been affixed in the factory or workshop during the first week in January, and a copy thereof has on the same day been forwarded to the inspector of the district: Provided that any such notice may be changed by a subsequent notice affixed and sent in like manner not less than fourteen days before the holiday or half holiday to which it applies.

Conditions of Employment.

17. An occupier of a factory or workshop shall not knowingly allow a woman to be employed therein within four weeks after she has given birth to a child.

18. On and after the first day of January one thousand eight hundred and ninety-three no child under the age of eleven years shall be employed in a factory or workshop.

Provided always, that any child lawfully employed under the principal Act, or any Act relating to the employment of children, at the time that the provisions of this section come into operation shall be exempt from its provisions.

19. Every certifying surgeon acting under this or the principal Act shall in each year make at the prescribed time a report in the prescribed form to the Secretary of State as to the persons inspected during the year, and the results of the inspection.

20. Where the age of any child or young person under the age of sixteen years is required to be ascertained or proved for the purposes of this Act, or for any purpose connected with the elementary education or employment in labour of such child or young person, any person shall, on presenting a written requisition, in such form, and containing such particulars as may be from time to time prescribed by the Local Government Board, and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register, under the Births and Deaths Registration Acts, 1836 to 1874, of the birth of that child or young person; and such form of requisition shall on request be supplied without charge by every superintendent registrar and registrar of births, deaths, and marriages.

21. There shall be repealed so much of section sixty-one of the principal Act as enacts that the provisions therein mentioned shall not apply to a workshop which is conducted on the system of not employing children or young persons therein, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system.

Miscellaneous.

22.—(1.) In section thirty-one of the principal Act for the words “and is of such a nature as to prevent the person injured by it from returning to his work in the factory or workshop within forty-eight hours after the occurrence of the accident,” shall be substituted the words “and is of such a nature as to prevent the person injured by it from returning to his work in the factory or workshop and doing ‘five hours’ work on any day during the next three days after the occurrence of the accident.”

(2.) The notice required under that section shall, where the person killed or injured is not removed to his own residence, state both his residence and the place to which he has been removed.

(3.) Where a death has occurred by accident in any factory or workshop, the coroner shall forthwith advise the district inspector under this Act of the time and place of the holding of the inquest, and at such inquest any relative of any person whose death may have been caused by the accident with respect to which the inquest is being held, and any inspector under the principal Act, and the occupier of the factory or workshop in which the accident occurred, and any person appointed by the order in writing of the majority of the workpeople employed in the said factory or workshop shall be at liberty to attend and examine any witness either in person or by his counsel, solicitor, or agent, subject nevertheless to the order of the coroner.

23. In the appointment of inspectors of factories in Wales and Monmouthshire, among candidates otherwise equally qualified, persons having a knowledge of the Welsh language shall be preferred.

24. Every person who is engaged as a weaver in the cotton, worsted, or woollen, or linen or jute trade, or as a winder, weaver, or reeler in the cotton trade, and is paid by the piece, in or in connection with any factory or workshop, shall have supplied to him with his work sufficient particulars to enable him to ascertain the rate of wages at which he is entitled to be paid for the work, and the occupier of the factory or workshop shall supply him with such particulars accordingly.

If the occupier of any factory or workshop fails to supply such particulars then, unless he proves that he has given the best information in his power with respect to such particulars, he shall be liable for each offence to a fine not exceeding ten pounds, and in the case of a second or subsequent conviction for the same offence within two years from the last conviction for that offence not less than one pound.

Provided always, that in the event of anyone who is engaged as an operative in any factory or workshop receiving such particulars, and subsequently disclosing the same with a fraudulent object or for the purpose of gain, whether they be furnished directly to him or to a fellow workman, he shall be liable for each offence to a fine not exceeding ten pounds.

Provided also, that anyone who shall solicit or procure a person so engaged in any factory to disclose such particulars with the object or purpose aforesaid, or shall pay or reward such person, or shall cause such person to be paid or rewarded, for so disclosing such particulars, shall be guilty of an offence, and shall be liable for each offence to a fine not exceeding ten pounds.

25. The powers of entry conferred by section sixty-eight of the principal Act on an inspector under that Act may be exercised without the authority or warrant required in certain cases by section sixty-nine of that Act.

26.—(1.) Section seventy-five of the principal Act (which requires notice to be given of the occupation of a factory) shall apply to a workshop (including any workshop conducted on the system of not employing any child, young person, or woman therein) in like manner as it applies to a factory.

(2.) Where an inspector receives notice in pursuance of this section with respect to a workshop, he shall forthwith forward the notice to the sanitary authority of the district in which the workshop is situate.

27.—(1.) The occupier of every factory and workshop (including any workshop conducted on the system of not employing any child, young person, or woman therein) and every contractor employed by any such occupier in the business of the factory or workshop shall, if so required by the Secretary of State by an order made in accordance with section sixty-five of the principal Act, and subject to any exceptions mentioned in the order, keep in the prescribed form and with the prescribed particulars lists showing the names of all persons directly employed by him, either as workman or as contractor, in the business of the factory or workshop, outside the factory or workshop, and the places where they are employed, and every such list

shall be open to inspection by any inspector under the principal Act or by any officer of a sanitary authority.

(2.) In the event of a contravention of this section by the occupier of a factory or workshop, or by a contractor, the occupier or contractor shall be liable to a fine not exceeding forty shillings.

28. The fine imposed on a conviction under sections sixty-eight, eighty-one, eighty-two, or eighty-three of the principal Act, for any offence in relation to a factory, shall, in case of a second or subsequent conviction for the same offence within two years from the last conviction for that offence, be not less than one pound for each offence.

29. In summary proceedings for offences and fines under the principal Act as amended by any subsequent Act, an information may be laid within three months after the date at which the offence comes to the knowledge of a factory inspector, or in case of an inquest being held in relation to the offence, then within two months after the conclusion of the inquest, so, however, that it shall not be laid after the expiration of six months from the commission of the offence.

30. Section ninety-two of the principal Act shall apply to a workshop in like manner as it applies to a factory.

31. In section ninety-three of the principal Act for the words "a place solely used as a dwelling shall not be deemed to form part of the factory or workshop for the purposes of this Act," shall be substituted the words "a room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act."

32. Nothing in the principal Act as amended by this Act shall apply to the process of cleaning and preparing fruit so far as is necessary to prevent the spoiling of the fruit on its arrival at a factory or workshop during the months of June, July, August, and September.

33. In the application of this Act to Scotland, the following modifications shall be made, namely—

- (1.) The expression "Births and Deaths Registration Acts, 1836 to 1874," shall mean the Acts relating to the registration of births, deaths, and marriages in Scotland :
- (2.) The expression "Public Health Act, 1875," where it occurs in section seven of this Act shall mean the Public Health (Scotland) Act, 1867, and the Acts amending the same :
- (3.) The Board of Supervision shall be substituted for the Local Government Board :
- (4.) In lieu of Christmas Day, and either Good Friday or the next public holiday under the Holidays Extension Act, 1875, there shall be allowed as a holiday to every child, young person, and woman employed in a factory or workshop within a burgh or police burgh, the two days in each year set apart by the Church of Scotland for the observance of the sacramental fast in the parish in which the factory or workshop is situate, and in such burghs or police burghs where such fast days have been abolished or discontinued there shall be allowed as a holiday to every child, young person, and woman employed in a factory or workshop in such burghs or police burghs such two whole days in each year, separated by an interval of not less than three months, as shall be fixed by the magistrates or police commissioners in such burghs or police burghs, and such magistrates or

police commissioners, as the case may be, are hereby required to fix, and from time to time, if it shall seem expedient to them to do so, to alter such holidays, and give public notice thereof fourteen days before the date at any time fixed.

- (5.) Where a death has occurred by accident in any factory or workshop a public inquiry in open court shall be held by the sheriff, upon the petition of any party interested, and the sheriff shall forthwith advise the district inspector under this Act of the time and place of the holding of the inquiry, and at such inquiry any relative of any person whose death has been caused by the accident with respect to which the inquiry is being held, and the occupier or manager of the factory or workshop in which the accident occurred, and any person appointed by the order in writing of the majority of the workpeople employed in the said factory or workshop, shall be at liberty to attend and examine any witness, either in person, or by his counsel, solicitor, or agent, subject nevertheless to the order of the sheriff.

34. For subsection (2) of section one hundred and six of the principal Act, the following subsection shall be substituted :—

- (2.) In lieu of any two half-holidays allowed under the provisions of subsection (2) of section twenty-two of this Act, there shall be allowed as a holiday to every child, young person, and woman employed in a factory or workshop the whole of the seventeenth day of March, when that day does not fall on a Sunday, or at the option of the occupier of the factory or workshop, either Good Friday (unless that day is otherwise fixed as a holiday) or Easter Tuesday.

35. The fee to be charged in pursuance of section one hundred and four of the principal Act shall not exceed sixpence, and that section shall apply in the case of a young person under the age of sixteen years in like manner as it applies in the case of a child.

36. The expression "retail bakehouse" in the Factory and Workshops Act, 1883, shall not include any place which is a factory within the meaning of the principal Act.

37.—(1.) For the purposes of the principal Act and this Act the expression "machinery" shall include any driving strap or band, and the expression "process" shall include the use of any locomotive.

(2.) In this Act the expression "domestic workshop" means a workshop to which section sixteen of the principal Act applies.

38. There shall be added in line three, subsection (3), of the Fourth Schedule of the principal Act, after "earthenware," the words "or china."

39. The enactments specified in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Provided that any special rules or requirements made under any enactment repealed by this Act shall continue to have effect as if made under this Act, and the provisions of this Act shall apply thereto accordingly.

40. This Act shall, except where it is otherwise expressed, come into operation on the first day of January one thousand eight hundred and ninety-two.

41.—(1.) This Act may be cited as the Factory and Workshop Act, 1891, and shall be construed as one with the Factory and Workshop Act, 1878.

(2.) The Factory and Workshop Act, 1878, the Factory and Workshop Act, 1883, and the Cotton Cloth Factories Act, 1889, may, together with this Act, be cited collectively as the Factory and Workshops Acts, 1878 to 1891.

SCHEDULES.

FIRST SCHEDULE.

REFERRING TO SECTIONS 7 AND 8.

1. The parties to the arbitration are in this schedule deemed to be the occupiers of the factory or workshop on the one hand and the chief inspector, on behalf of the Secretary of State, on the other.

2. Each of the parties to the arbitration may, within fourteen days after the date of the reference, appoint an arbitrator.

3. No person shall act as arbitrator or umpire under this Act who is employed in, or in the management of, or is interested in, the factory or workshop to which the arbitration relates.

4. The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of that party.

5. The death or removal of, or other change in, any of the parties to the arbitration shall not affect the proceedings under this schedule.

6. If within the said fourteen days either of the parties fails to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

7. If before an award has been made any arbitrator appointed by either party dies or becomes incapable to act, or for seven days refuses or neglects to act, the party by whom that arbitrator was appointed may appoint some other to act in his place; and if he fails to do so within seven days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matter in difference, and in that case the award of the single arbitrator shall be final.

8. In either of the foregoing cases where an arbitrator is empowered to act singly, on one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had occurred.

9. If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned.

10. The arbitrators, before they enter on the matter referred to them, shall appoint by writing under their hands an umpire to decide on points on which they may differ.

11. If the umpire dies or becomes incapable of acting before he has

made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place.

12. If the arbitrators refuse or fail, or for seven days after the request of either party neglect, to appoint an umpire, then on the application of either party an umpire may be appointed by the chairman of the quarter sessions within the jurisdiction of which the factory or workshop is situate.

13. The decision of every umpire on the matters referred to him shall be final.

14. If a single arbitrator fails to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place.

15. Arrangements shall, whenever practicable, be made for the matters in difference being heard at the same time before the arbitrators and the umpire.

16. The arbitrators and the umpire, or any of them, may examine the parties and their witnesses on oath, and may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult.

17. The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by a master of the Supreme Court, or, in Scotland, by the auditor of the Court of Session, and the taxing officer shall, on the written application of either of the parties, ascertain and certify the proper amount thereof. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under the principal Act. The amount, if any, payable by the occupier of the factory or workshop may in the event of nonpayment be recovered in the same manner as fines under the principal Act.

SECOND SCHEDULE.

REFERRING TO SECTION 39.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
41 & 42 Vict. c. 16.	The Factory and Workshop Act, 1878.	In section three, the words "and a workshop" and "or workshop" wherever they occur. In section five, subsection (1), the words "near to which any person is liable to pass or to be employed." Sections six, seven, and eight. Section fifteen, from "and" at the end of subsection (1) to the end of the section.

SECOND SCHEDULE (*continued*)—

Session and Chapter.	Title or Short Title.	Extent of Repeal.
41 & 42 Vict. c. 16 (<i>continued</i>).	The Factory and Workshop Act, 1878 (<i>continued</i>).	In section twenty-two, subsection (4). In section thirty-one the words "and is of such a nature as to prevent the person injured by it from returning to his work in the factory or workshop within forty-eight hours after the occurrence of the accident." In section thirty-three the words "and workshop," "or workshop," and "or workshops," wherever they respectively occur. Section sixty-one, from "or" at the end of the paragraph marked (a) to the words "workshop on that system." Section sixty-nine. Section ninety-one, from "(1.) The information shall be laid" to "commission of the offence." In section one hundred and one, the words "or workshop."
46 & 47 Vict. c. 53.	The Factory and Workshop Act, 1883.	Sections seven to twelve and subsections (2) and (3) of section seventeen.
51 & 52 Vict. c. 22.	The Factory and Workshop Amendment (Scotland) Act, 1888.	The whole Act.
52 & 53 Vict. c. 62.	The Cotton Cloth Factories Act, 1889.	Section twelve.

VIII. EMPLOYERS' LIABILITY ACT, 1880.

(43 & 44 VICT. CAP. 42.)

1. By this Act where personal injury is caused to a workman
 - (1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

- (2.) By reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence ; or
- (3.) By reason of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform where such injury resulted from his having so conformed ; or
- (4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer or in obedience to the particular instructions given by any person delegated with the authority of the employer in that behalf ; or
- (5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway, the workman, or in case the injury resulted in death, the legal personal representatives of the workman, and any person entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of, the employer, nor engaged in his work.

2. A workman is not entitled to any right of compensation or remedy against the employer in any of the following cases ; that is to say—

- (1.) Under subsection one of section one unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer and entrusted with the duty of seeing that the ways, works, machinery, or plant were in proper order or condition.
- (2.) Under subsection four of section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned, provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of her Majesty's principal Secretaries of State, or by the Board of Trade or any other department of the Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.
- (3.) In any case where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. The amount of compensation recoverable is not to exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

4. An action for the recovery of compensation for an injury is not maintainable unless notice that injury has been sustained is given

within six weeks and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within twelve months from the time of death. Provided always that in case of death the want of such notice is no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

5. There will be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by or under or through a workman in respect of any cause of action arising hereunder, any penalty or part of a penalty which may have been made in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action, and where an action has been brought under this Act by any workman or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty, or part of a penalty, under any other Act of Parliament in respect of the same cause of action such workman, representatives, or person shall not be entitled thereafter to receive any penalty, or part of a penalty, under any other Act of Parliament in respect of the same cause of action.

6.—(1.) Every action for recovery of compensation under this Act must be brought in a County Court, but may upon the application of either plaintiff or defendant be removed into a superior court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed.

(2.) Upon the trial of any such action in a County Court before the judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

7. Notice in respect of an injury hereunder must give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers. The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the body of such offices. A notice under this section will not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

8. For the purposes of this Act, unless the context otherwise requires, the expression "person who has superintendence entrusted to

him," means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour. The expression "employer" includes a body of persons, corporate or incorporate. The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

IX. PAYMENT OF WAGES IN PUBLIC-HOUSES PROHIBITION ACT, 1883.

(46 & 47 VICT. CAP. 31.)

Whereas by the Coal Mines Regulation Act, 1872, and the Metaliferous Mines Regulation Act, 1882, the payment in public-houses, beershops, or other places in the said Acts mentioned of wages to persons employed in or about any mines to which the said Acts apply, is prohibited, and it is expedient to extend such prohibition to the payment in public-houses, beer-shops, and other places in England and Scotland of wages to all workmen as defined by this Act.

1. This Act may be cited as "The Payment of Wages in Public-houses Prohibition Act, 1883."

2. In this Act the expression "workman" means any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or is otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, but does not include a domestic or menial servant, nor any person employed in or about any mine to which the Coal Mines Regulation Act, 1872, or the Metaliferous Mines Regulation Act, 1882, applies.

3. From and after the passing of this Act no wages shall be paid to any workman at or within any public-house, beershop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place to any workman bona-fide employed by him.

Every person who contravenes or fails to comply with or permits any person to contravene or fail to comply with this Act shall be guilty of an offence against this Act.

And in the event of any wages being paid by any person in contravention of the provisions of this Act, for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act and to prevent such contravention.

4. Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding ten pounds for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England in the manner provided by the Summary Jurisdiction Acts, and in Scotland in the manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

This Act shall not apply to Ireland.

X. SHOP HOURS ACT, 1892.

(55 & 56 VICT. CAP. 62.)

Whereas the health of many young persons employed in shops and warehouses is seriously injured by reason of the length of the period of employment :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Shop Hours Act, 1892.

2. This Act shall come into operation on the first day of September one thousand eight hundred and ninety-two.

3.—(1.) No young person shall be employed in or about a shop for a longer period than seventy-four hours, including meal times, in any one week.

(2.) No young person shall to the knowledge of his employer be employed in or about a shop having been previously on the same day employed in any factory or workshop, as defined by the Factory and Workshop Act, 1878, for the number of hours permitted by the said Act or for a longer period than will together with the time during which he has been so previously employed complete such number of hours.

4. In every shop in which a young person is employed a notice shall be kept exhibited by the employer in a conspicuous place referring to the provisions of this Act and stating the number of hours in the week during which a young person may lawfully be employed in that shop.

5. Where any young person is employed in or about a shop contrary to the provisions of this Act, the employer shall be liable to a fine not exceeding one pound for each person so employed.

6. Where the employer of any young person is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the said employer proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

7. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1878, and sections eighty-eight, eighty-nine, ninety, and ninety-one of the said Act, and so much of section ninety-two thereof as relates to evidence respecting the age of any person, and the provisions relating to the application of the said Act to Scotland and Ireland, so far as those provisions are applicable, shall have effect as if re-enacted in this Act and in terms made applicable thereto.

8. The council of any county or borough, and in the city of London the common council, may appoint such inspectors as they may think necessary for the execution of this Act within the areas of their

respective jurisdictions, and sections sixty-eight and seventy of the Factory and Workshop Act, 1878, shall apply in the case of any such inspector as if he were appointed under that Act, and as if the expression workshop as used in those sections included any shop within the meaning of this Act.

The powers conferred by this section may be exercised in Ireland by the council of any municipal borough and by the commissioners of any town or township.

9. In this Act, unless the context otherwise requires—

“Shop” means retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire, and includes licensed public-houses and refreshment houses of any kind :

“Young person” means a person under the age of eighteen years :

Other words and expressions have the same meanings respectively as in the Factory and Workshop Act, 1878.

10. Nothing in this Act shall apply to a shop where the only persons employed are members of the same family, dwelling in the building of which the shop forms part or to which the shop is attached, or to members of the employer's family so dwelling, or to any person wholly employed as a domestic servant.

XI. MASTER AND SERVANT ACT, 1889.

(52 & 53 VICT. CAP. 24.)

Whereas certain statutes relating to master and servant in particular manufactures have, partly by reason of changes in the methods of manufacture and in the conditions of employment, and partly by reason of improvements in the general law, either ceased to be put in force or become unnecessary, and it is expedient with a view to the revision of the statute law, and particularly to the improvement of the revised edition of the statutes, to expressly and specifically repeal the same :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Master and Servant Act, 1889.

2. The enactments described in the schedule to this Act are hereby repealed :

Provided that where any enactment not comprised in the schedule has been repealed, confirmed, revived, or perpetuated by any enactment hereby repealed, such repeal, confirmation, revivor, or perpetuation shall not be affected by the repeal effected by this Act :

And the repeal by this Act of any enactment shall not affect any enactment in which such enactment has been applied, incorporated, or referred to :

And this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered,—or any existing status or capacity,—or any right, title, obligation, or liability already acquired, accrued, or incurred. or any remedy or proceeding in respect thereof,—or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand,—or any indemnity,—or the proof of any past act or thing :

And this Act shall not extend to repeal any enactment so far as the same may be in force in any part of her Majesty's dominions out of the United Kingdom.

SCHEDULE.

ENACTMENTS which have been already REPEALED are in some instances INCLUDED in this SCHEDULE, in order to avoid the necessity of reference to PREVIOUS STATUTES.

Session and Chapter.	Title of Act.
* Ann. stat. 2. c. 22.	An Act for the more effectual preventing the Abuses and Frauds of persons employed in the working up the Woollen, Linen, Fustian, Cotton, and Iron Manufactures of this Kingdom.
2 Geo. 1. c. 17 . . . Irish.	An Act to empower Justices of the Peace to determine disputes about Servants, Artificers, Day Labourers, Wages, and other small Demands, and to oblige Masters to pay the same, and to punish Idle and Disorderly Servants. in part; namely, sections two, nine, and sixteen.
9 Geo. 1. c. 27 . . .	An Act for preventing Journeymen Shoemakers selling, exchanging, or pawning Boots, Shoes, Slippers, Cut Leather, or other Materials for making Boots, Shoes, or Slippers, and for better regulating the said Journeymen.
12 Geo. 1. c. 34 . . .	An Act to prevent unlawful Combinations of Workmen employed in the Woollen Manufactures, and for better Payment of their Wages.
13 Geo. 1. c. 26 . . .	An Act for better Regulation of the Linen and Hempen Manufactures in that Part of Great Britain called Scotland. in part; namely, except section eighteen.
13 Geo. 2. c. 8 . . .	An Act to explain and amend an Act made in the First Year of the Reign of Her late Majesty Queen Anne, intituled "An Act for the more effectual preventing the Abuses and Frauds of Persons employed in the working up the Woollen, Linen, Fustian, Cotton, and Iron Manufactures of this Kingdom"; and for extending the said Act to the Manufactures of Leather.
15 Geo. 2. c. 27 . . .	An Act for the more effectual preventing any Cloth or Woollen Goods remaining upon the Rack or Tenters, or any Woollen Yarn or wooll left out to dry, from being stolen or taken away in the Night-time.

* These references are to the Statutes Revised.

SCHEDULE (*continued*).

Session and Chapter.	Title of Act.
25 Geo. 2. c. 8 . . Irish.	An Act for the better adjusting and more easy recovery of the Wages of certain Servants, and for the better regulation of such Servants and of certain Apprentices; and for the punishment of all such Owners of Coal and their Agents as shall knowingly employ and set at Work Persons retained in the service of other Coal-owners; and also that Mutual Debts between Party and Party be set one against the other. in part; namely, sections two and seven.
27 Geo. 2. c. 7 . .	An Act for the more effectual preventing of Frauds and Abuses committed by Persons employed in the Manufacture of Clocks and Watches.
29 Geo. 2. c. 12 . . Irish.	An Act to prevent unlawful combinations of Tenants, Colliers, Miners, and others; and the sending of threatening Letters without Names, or with Fictitious Names subscribed thereto; and the malicious destruction of Carriages; and for the more effectual Punishment of wicked Persons who shall maliciously set fire to Houses or Out-houses, or to Stacks of Hay, Corn, Straw, or Turf, or to Ships or Boats. in part; namely, sections nine, ten, eleven, and twelve.
30 Geo. 2. c. 12 . .	An Act to amend an Act made in the Twenty-ninth year of the Reign of His present Majesty, intituled "An Act to render more effectual an " Act passed in the Twelfth Year of the Reign " of His late Majesty King George, to prevent " unlawful Combinations of Workmen employed in the Woollen Manufactures, and " for better Payment of their Wages; and " also an Act passed in the Thirteenth Year of " the Reign of His said late Majesty, for the " better Regulation of the Woollen Manufacture, and for preventing Disputes among " the Persons concerned therein; and for " limiting a Time for prosecuting for the " Forfeiture appointed by the aforesaid " Act in case of Payment of the Workman's " Wages in any other Manner than in " Money."
5 Geo. 3. c. 51 . .	An Act for repealing several Laws relating to the Manufacture of Woollen Cloth in the County of York, and also so much of several

SCHEDULE (*continued*).

Session and Chapter.	Title of Act.
5 Geo. 3. c. 51 (<i>continued</i>).	other Laws as prescribes particular Standards of Width and Length of such Woollen Cloths ; and for substituting other Regulations of the Cloth Trade within the West Riding of the said county, for preventing Frauds in certifying the Contents of the Cloth, and for preserving the Credit of the said Manufacture at the Foreign market.
6 Geo. 3. c. 23. .	An Act to amend an Act made in the last Session of Parliament, intituled "An Act for repealing several Laws relating to the Manufac- " ture of Woollen Cloth in the County of York, " and also so much of several other Laws as " prescribes particular Standards of Width " and Length of such Woollen Cloths ; and " for substituting other Regulations of the " Cloth Trade within the West Riding of the " said County, for preventing Frauds in cer- " tifying the Contents of the Cloth, and for " preserving the Credit of the said Manufac- " ture at the Foreign Market."
14 Geo. 3. c. 25. .	An Act for the more effectual preventing Frauds and Embezzlements by Persons employed in the Woollen Manufactory.
14 Geo. 3. c. 44. .	An Act to amend an Act made in the Twenty-second Year of the Reign of His late Majesty King George the Second, intituled "An Act " for the more effectual preventing of Frauds " and Abuses committed by Persons employed " in the Manufacture of Hats, and in the " Woollen, Linen, Fustian, Cotton, Iron, " Leather, Fur, Hemp, Flax, Mohair, and " Silk Manufactures ; and for preventing un- " lawful Combinations of Journeymen Dyers " and Journeymen Hot Pressers, and of all " Persons employed in the said several Manu- " factures ; and for the better Payment of " their Wages."
17 Geo. 3. c. 55 .	An Act for the better regulating the Hat Manu- factory.
23 Geo. 3. c. 15 .	An Act for rendering more effectual the Pro- visions contained in an Act of the Thirteenth Year of King George the First for preventing Frauds and Abuses in the Dyeing Trade. in part ; namely, sections five to twelve, and section thirteen from "directed to any con- stable" to end of section.

SCHEDULE (*continued*).

Session and Chapter.	Title of Act.
24 Geo. 3. Sess. 2. c. 3.	An Act for more effectually preventing Frauds and Abuses committed by Persons employed in the Manufactures of combing Wool, Worsted Yarn, and Goods made from Worsted in the County of Suffolk.
25 Geo. 3. c. 40	An Act for more effectually preventing Frauds and Abuses committed by Persons employed in the Manufactures of Combing Wool, Worsted Yarn, and Goods made from Worsted, in the Counties of Bedford, Huntingdon, Northampton, Leicester, Rutland, and Lincoln, and the Isle of Ely.
28 Geo. 3. c. 55	An Act for the better and more effectual Protection of Stocking Frames, and the Machines or Engines annexed thereto or used therewith, and for the Punishment of Persons destroying or injuring of such Stocking Frames, Machines, or Engines, and the Framework, Knitted Pieces, Stockings, and other Articles and Goods used and made in the Hosiery or Framework-knitted Manufactory, or breaking or destroying any Machinery contained in any Mill or Mills used or any way employed in preparing or spinning of Wool or Cotton for the Use of the Stocking Frame.
31 Geo. 3. c. 56	An Act more effectually to prevent Abuses and Frauds committed by Persons employed in the Manufactures of Combing Wool and Worsted Yarn in the County of Norfolk and City of Norwich and County of the said City.
51 Geo. 3. c. 41	An Act to repeal so much of an Act passed in the Eighteenth Year of the Reign of King George the Second, intituled "An Act for the more effectual preventing the stealing of "Linen, Fustian, and Cotton Goods and "Wares in Buildings, Fields, Grounds, and "other Places used for printing, whitening, "bleaching, or drying the same," as takes away the Benefit of Clergy from Persons stealing Cloth in Places therein mentioned; and for more effectually preventing such Felonies.

XII. MERCHANT SHIPPING ACT, 1889.

(52 & 53 VICT. CAP. 46.)

1. Every master of a ship, and every person acting lawfully as master of a ship by reason of the decease or incapacity from illness of the master of the ship, shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of disbursements properly made by him on account of the ship and for liabilities properly incurred by him on account of the ship as a master now has for the recovery of his wages; and if in any proceedings in any Court of Admiralty or Vice-Admiralty, or in any County Court having Admiralty jurisdiction, touching the claim of a master, or any person lawfully acting as master, to wages or such disbursements or liabilities as aforesaid any right of set off or counterclaim is set up, it shall be lawful for the court to enter into and adjudicate upon all, and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

2.—(i.) Any agreement with a seaman made under section 149 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), may contain a stipulation for payment to or on behalf of the seaman conditionally on his going to sea in pursuance of the agreement of a sum not exceeding the amount of one month's wages, payable to the seaman under the agreement.

(ii.) Save as authorised by this section any agreement by or on behalf of the employer of a seaman for the payment of money to or on behalf of the seaman conditionally on his going to sea from any port in the United Kingdom shall be void, and no money paid in satisfaction or in respect of any such agreement shall be deducted from the seaman's wages, and no person shall have any right of action, suit, or set off against the seaman or his assignee in respect of any money so paid or purporting to have been so paid.

(iii.) Nothing herein shall affect any allotment made under the Merchant Shipping Act, 1854, or the Acts amending the same.

(iv.) Section 2 of the Merchant Seamen (Payment of Wages and Rating) Act, 1880 (43 & 44 Vict. c. 16) is hereby repealed.

3. Every superintendent of a mercantile marine office shall keep at his office a list of the seamen who, to the best of his knowledge and belief, have deserted or failed to join their ships after signing an agreement to proceed therein, and shall on request show this list to any master of a ship. A superintendent of a mercantile office shall not be liable in respect of any entry made in good faith in the list so kept.

4. Where a seaman has agreed with the master of a British ship for payment of his wages in British sterling or any other money, any payment of or on account of his wages, if made in any other currency than that stated in the agreement, shall notwithstanding anything in the agreement be made at the rate of exchange for the money stated

in the agreement for the time current at the place where the payment is made.

5. The provisions of the Merchant Shipping Act, 1854, and the Acts amending the same with respect to steam-ships shall apply to ships propelled by electricity or other mechanical power, with such modification as the Board of Trade may from time to time prescribe for purposes of adaptation.

6.—(i.) This Act may be cited as “The Merchant Shipping Act, 1889.”

(ii.) This Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and this Act and those Acts may be cited collectively as “The Merchant Shipping Acts, 1854 to 1889.”

XIII. ARBITRATION ACT, 1889.

(52 & 53 VICT. CAP. 49.)

References by Consent out of Court.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects as if it had been made an order of Court.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

5. In any of the following cases:

(a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator:

- (b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy :
- (c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him :
- (d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy :

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the Court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

- (a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place ;
- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent :

Provided that the Court or a judge may set aside any appointment made in pursuance of this section.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a.) to administer oaths to or take the affirmations of the parties and witnesses appearing ; and
- (b.) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court ; and
- (c.) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

8. Any party to a submission may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

9. The time for making an award may from time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not.

10.—(1.) In all cases of reference to arbitration the Court or a

judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

11.—(1.) Where an arbitrator or umpire has misconducted himself, the Court may remove him.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside.

12. An award on a submission may, by leave of the Court or a judge, be enforced in the same manner as a judgment or order to the same effect.

References under Order of Court.

13.—(1.) Subject to Rules of Court and to any right to have particular cases tried by a jury, the Court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

(2.) The report of an official or special referee may be adopted wholly or partially by the Court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

14. In any cause or matter (other than a criminal proceeding by the Crown),—

(a.) If all the parties interested who are not under disability consent; or,

(b.) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court or a judge conveniently be made before a jury or conducted by the Court through its other ordinary officers; or,

(c.) If the question in dispute consists wholly or in part of matters of account;

the Court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court.

15.—(1.) In all cases of reference to an official or special referee or arbitrator under an order of the Court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by Rules of Court, and subject thereto as the Court or a judge may direct.

(2.) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the Court or a judge, be equivalent to the verdict of a jury.

(3.) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the Court or a judge shall be determined by the Court or a judge.

16. The Court or a judge shall, as to references under order of the Court or a judge, have all the powers which are by this Act conferred on the Court or a judge as to references by consent out of Court.

17. Her Majesty's Court of Appeal shall have all the powers conferred by this Act on the Court or a judge thereof under the provisions relating to references under order of the Court.

General.

13.—(1.) The Court or a judge may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2.) The Court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference.

20. Any order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

21. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the Court or a judge.

22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly.

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which Her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the Court or a judge to order any proceedings to which Her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of Her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act.

25. This Act shall not affect any arbitration pending at the commencement of this Act, but shall apply to any arbitration commenced after the commencement of this Act under any agreement or order made before the commencement of this Act.

26.—(1.) The enactments described in the Second Schedule to this Act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this Act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2.) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

27. In this Act, unless the contrary intention appears,—

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

“Court” means Her Majesty’s High Court of Justice.

“Judge” means a judge of Her Majesty’s High Court of Justice.

“Rules of Court” means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

28. This Act shall not extend to Scotland or Ireland.

29. This Act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

30. This Act may be cited as the Arbitration Act, 1889.

SCHEDULES.

THE FIRST SCHEDULE.

Provisions to be implied in Submissions.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator.

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers,

accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

g. The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation.

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
9 Will. 3. c. 15 .	An Act for determining differences by arbitration.	The whole Act.
3 & 4 Will. 4. c. 42	An Act for the further amendment of the law and the better advancement of justice.	Sections thirty-nine to forty-one, both inclusive.
17 & 18 Vict. c. 125	The Common Law Procedure Act, 1854.	Sections three to seventeen, both inclusive.
36 & 37 Vict. c. 66	The Supreme Court of Judicature Act, 1873.	Section fifty-six, from "Subject to any Rules of Court" down to "as a judgment by the Court," both inclusive, and the words "special referees or." Sections fifty-seven to fifty-nine, both inclusive.
47 & 48 Vict. c. 61	The Supreme Court of Judicature Act, 1884.	Sections nine to eleven, both inclusive.

XIV. AN ACT TO DECLARE AND AMEND THE
LAW OF PARTNERSHIP, 1890.

(53 & 54 VICT. CAP. 39.)

Nature of Partnership.

1.—(1.) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2.) But the relation between members of any company or association which is—

(a.) Registered as a company under the Companies Act, 1862, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies ; or

(b.) Formed or incorporated by or in pursuance of any other Act of Parliament or letters patent, or Royal Charter ; or

(c.) A company engaged in working mines within and subject to the jurisdiction of the Stannaries :

is not a partnership within the meaning of this Act.

2. In determining whether a partnership does or does not exist, regard shall be had to the following rules :—

(1.) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2.) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3.) The receipt by a person of the share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business ; and in particular :—

(a.) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such ;

(b.) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such ;

(c.) A person being the widow or child of a deceased partner, receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such ;

- (d.) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business does not of itself make the lender a partner with the person or persons carrying on the business or liable as such provided that the contract is in writing and signed by or on behalf of all the parties thereto ;
- (e.) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the good-will of the business is not by reason only of such receipt a partner in the business or liable as such.

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a good-will in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the good-will shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

4.—(1). Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name.

(2.) In Scotland a firm is a legal person distinct from the partners of whom it is composed, but an individual partner may be charged on a decree of diligence directed against the firm, and on payment of the debts is entitled to relief *pro rata* from the firm and its other members.

Relations of Partners to persons dealing with them.

5. Every partner is an agent of the firm and his other partners for the purposes of the business of the partnership ; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all its partners.

Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

7. Where one partner pledges the credit of a firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound, unless he is in fact specially authorised by the

other partners ; but this section does not affect any personal liability incurred by an individual partner.

8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.

9. Every partner in a firm is liable jointly with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner ; and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts.

10. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

11. In the following cases ; namely—

(a.) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it ; and

(b.) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm ;

the firm is liable to make good the loss.

12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections.

13. If a partner, being a trustee, improperly employs trust-property in the business or on the account of the partnership, no other partner is liable for the trust-property to the persons beneficially interested therein :

Provided as follows :—

(1.) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust ; and

(2.) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

14.—(1.) Every one who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

(2.) Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators' estate or effects liable for any partnership debts contracted after his death.

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

17.—(1.) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

(2.) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

(3.) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty or obligation was given.

Relations of Partners to one another.

19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

20.—(1.) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2.) Provided that the legal estate or interest in any land, or in Scotland the title to and interest in any heritable estate, which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3.) Where co-owners of an estate or interest in any land, or in Scotland of any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

22. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or moveable and not real or heritable estate.

23.—(1.) After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm.

(2.) The High Court, or a judge thereof, or the Chancery Court of the County Palatine of Lancaster, or a county court, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require.

(3.) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

(4.) This section shall apply in the case of a cost-book company as if the company were a partnership within the meaning of this Act.

(5.) This section shall not apply to Scotland.

24. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

(1.) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.

(2.) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—

(a.) In the ordinary and proper conduct of the business of the firm; or

(b.) In or about anything necessarily done for the preservation of the business or property of the firm.

(3.) A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per cent. per annum from the date of the payment or advance.

(4.) A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

(5.) Every partner may take part in the management of the partnership business.

(6.) No partner shall be entitled to remuneration for acting in the partnership business.

(7.) No person may be introduced as a partner without the consent of all existing partners.

(8.) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.

(9.) The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

26.—(1.) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

(2.) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

27.—(1.) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2.) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

29.—(1.) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion.

(2.) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

31.—(1.) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2.) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is

entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

Dissolution of Partnership, and its consequences.

32. Subject to any agreement between the partners, a partnership is dissolved—

- (a.) If entered into for a fixed term, by the expiration of that term :
- (b.) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking :
- (c.) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

33.—(1.) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.

(2.) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt.

34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases :

- (a.) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner :
- (b.) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract :
- (c.) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business :
- (d.) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him :
- (e.) When the business of the partnership can only be carried on at a loss :
- (f.) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

36.—(1.) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.

(2.) An advertisement in the London Gazette as to a firm whose principal place of business is in England or Wales, in the Edinburgh Gazette as to a firm whose principal place of business is in Scotland, and in the Dublin Gazette as to a firm whose principal place of business is in Ireland, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3.) The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively.

37. On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

38. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

39. On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm.

40. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

- (a.) the dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or
- (b.) the partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

41. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

- (a.) to a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him, and is
- (b.) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and
- (c.) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

42.—(1.) Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.

(2.) Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed :

- (a.) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits :
- (b.) The assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order :
 - 1. In paying the debts and liabilities of the firm to persons who are not partners therein :
 - 2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital :
 - 3. In paying to each partner rateably what is due from the firm to him in respect of capital :

4. The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

Supplemental.

45. In this Act, unless the contrary intention appears,—

The expression “court” includes every court and judge having jurisdiction in the case :

The expression “business” includes every trade, occupation, or profession.

46. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

47. (1.) In the application of this Act to Scotland the bankruptcy of a firm or of an individual shall mean sequestration under the Bankruptcy (Scotland) Acts, and also in the case of an individual the issue against him of a decree of cessio bonorum.

- (2.) Nothing in this Act shall alter the rules of the law of Scotland relating to the bankruptcy of a firm or of the individual partners thereof.

48. The Acts mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

49. This Act shall come into operation on the first day of January one thousand eight hundred and ninety one.

50. This Act may be cited as the Partnership Act, 1890.

SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
19 & 20 Vict. c. 60	The Mercantile Law Amendment (Scotland) Act, 1856.	Section seven.
19 & 20 Vict. c. 97	The Mercantile Law Amendment Act, 1856.	Section four.
28 & 29 Vict. c. 86	An Act to amend the law of partnership.	The whole Act.

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